

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6259

Chapter 256, Laws of 2020

66th Legislature
2020 Regular Session

INDIAN BEHAVIORAL HEALTH SYSTEM--VARIOUS PROVISIONS

EFFECTIVE DATE: June 11, 2020—Except for section 203, which becomes effective July 1, 2021; and section 303, which becomes effective July 1, 2026.

Passed by the Senate March 10, 2020
Yeas 49 Nays 0

CYRUS HABIB

President of the Senate

Passed by the House March 5, 2020
Yeas 97 Nays 0

Laurie Jinkins

**Speaker of the House of
Representatives**

Approved March 31, 2020 11:18 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 **SUBSTITUTE SENATE BILL 6259** as passed by the Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON

Secretary

FILED

March 31, 2020

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6259

AS AMENDED BY THE HOUSE

Passed Legislature - 2020 Regular Session

State of Washington

66th Legislature

2020 Regular Session

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

READ FIRST TIME 02/07/20.

1 AN ACT Relating to improving the Indian behavioral health system
2 in this state; amending RCW 43.71B.901, 43.71B.010, 71.24.035,
3 71.24.155, 71.05.150, 71.05.150, 71.05.201, 71.05.212, 71.05.435, and
4 70.02.010; reenacting and amending RCW 71.24.025, 71.05.020, and
5 70.02.230; adding a new section to chapter 71.24 RCW; providing
6 effective dates; and providing an expiration date.

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

8 **PART I**

9 **Sec. 101.** RCW 43.71B.901 and 2019 c 282 s 1 are each amended to
10 read as follows:

11 (1) The legislature finds that:

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

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

18 (ii) Raise the health status of American Indians and Alaska
19 Natives to at least the levels set forth in the goals contained

1 within the healthy people 2020 initiative or successor objectives;
2 and

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

8 (b) According to the northwest tribal epidemiology center and the
9 department of health, American Indians and Alaska Natives in the
10 state experience some of the greatest health disparities compared to
11 other groups, including (~~excessively high rates of~~):

12 (i) (~~Premature~~) Disproportionately high rates of premature
13 mortality due to (~~suicide, overdose, unintentional injury, and~~
14 various) chronic diseases and unintentional injury; (~~and~~)

15 (ii) (~~Asthma~~) Disproportionately high rates of asthma, coronary
16 heart disease, hypertension, diabetes, prediabetes, obesity, dental
17 caries, poor mental health, youth depressive feelings, cigarette
18 smoking and vaping, and cannabis use;

19 (iii) A drug overdose death rate in 2016 in this state that is
20 three times higher than the national American Indian and Alaska
21 Native rate and has increased thirty-six percent since 2012 and
22 almost three hundred percent since 2000 in contrast to a relatively
23 stable rate for the state overall population. Over seventy-two
24 percent of these overdose deaths involved an opioid;

25 (iv) A suicide mortality rate in this state that is more than one
26 and four-fifths times higher than the rate for non-American Indians
27 and Alaska Natives. Since 2001, the suicide mortality rate for
28 American Indians and Alaska Natives in this state has increased by
29 fifty-eight percent which is more than three times the rate of
30 increase among non-American Indians and Alaska Natives. Nationally,
31 the highest suicide rates among American Indians and Alaska Natives
32 are for adolescents and young adults, while rates among non-Hispanic
33 whites are highest in older age groups, suggesting that different
34 risk factors might contribute to suicide in these groups; and

35 (v) A rate of exposure to significant adverse childhood
36 experiences between 2009 and 2011 that is nearly twice the rate of
37 non-Hispanic whites;

38 (c) These health disparities are a direct result of both
39 historical trauma, leading to adverse childhood experiences across

1 multiple generations, and inadequate levels of federal funding to the
2 Indian health service;

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

8 (e) Because the federal requirements to achieve this cost shift
9 and obtain the new federal funds place significant administrative
10 burdens on Indian health service and tribal health facilities, the
11 state has no way to shift these costs of care to the federal
12 government unless the state provides incentives for tribes to take on
13 these administrative burdens; and

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

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

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

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

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

30 (b) Establish the governor's Indian health advisory council to:

31 (i) Adopt a biennial Indian health improvement advisory plan,
32 developed by the reinvestment committee;

33 (ii) Address issues with tribal implications that are not able to
34 be resolved at the agency level; ~~((and))~~

35 (iii) Provide oversight of the Indian health improvement
36 reinvestment account; and

37 (iv) Draft recommended legislation to address Indian health
38 improvement needs including, but not limited to, crisis coordination
39 between Indian health care providers and the state's behavioral
40 health system;

1 (c) Establish the Indian health improvement reinvestment account
2 in order to provide incentives for tribes to assume the
3 administrative burdens created by the federal requirements for the
4 state to shift health care costs to the federal government;

5 (d) Appropriate and deposit into the reinvestment account all of
6 the new state savings, subject to federal appropriations and less
7 agreed upon administrative costs to maintain fiscal neutrality to the
8 state general fund; (~~and~~)

9 (e) Require the funds in the reinvestment account to be spent
10 only on costs for projects, programs, or activities identified in the
11 advisory plan;

12 (f) Address the ongoing suicide and addiction crisis among
13 American Indians and Alaska Natives by:

14 (i) Including Indian health care providers among entities
15 eligible to receive available resources as defined in RCW 71.24.025
16 for the delivery of behavioral health services to American Indians
17 and Alaska Natives;

18 (ii) Strengthening the state's behavioral health system crisis
19 coordination with tribes and Indian health care providers by removing
20 barriers to the federal trust responsibility to provide for American
21 Indians and Alaska Natives; and

22 (g) Recognize the sovereign authority of tribal governments to
23 act as public health authorities in providing for the health and
24 safety of their community members including those individuals who may
25 be experiencing a behavioral health crisis.

26 **Sec. 102.** RCW 43.71B.010 and 2019 c 282 s 2 are each amended to
27 read as follows:

28 The definitions in this section apply throughout this chapter
29 unless the context clearly requires otherwise.

30 (1) "Advisory council" means the governor's Indian health
31 advisory council established in RCW 43.71B.020.

32 (2) "Advisory plan" means the plan described in RCW 43.71B.030.

33 (3) "American Indian" or "Alaska Native" means any individual who
34 is: (a) A member of a federally recognized tribe; or (b) eligible for
35 the Indian health service.

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

37 (5) "Board" means the northwest Portland area Indian health
38 board, an Oregon nonprofit corporation wholly controlled by the
39 tribes in the states of Idaho, Oregon, and Washington.

1 (6) "Commission" means the American Indian health commission for
2 Washington state, a Washington nonprofit corporation wholly
3 controlled by the tribes and urban Indian organizations in the state.

4 (7) "Community health aide" means a tribal community health
5 provider certified by a community health aide program of the Indian
6 health service or one or more tribes or tribal organizations
7 consistent with the provisions of 25 U.S.C. Sec. 16161, who can
8 perform a wide range of duties within the provider's scope of
9 certified practice in health programs of a tribe, tribal
10 organization, Indian health service facility, or urban Indian
11 organization to improve access to culturally appropriate, quality
12 care for American Indians and Alaska Natives and their families and
13 communities, including but not limited to community health aides,
14 community health practitioners, behavioral health aides, behavioral
15 health practitioners, dental health aides, and dental health aide
16 therapists.

17 (8) "Community health aide program" means a community health aide
18 certification board for the state consistent with 25 U.S.C. Sec.
19 16161 and the training programs and certification requirements
20 established thereunder.

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

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

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

30 (12) "New state savings" means the savings to the state general
31 fund that are achieved as a result of the centers for medicare and
32 medicaid services state health official letter 16-002 and related
33 guidance, calculated as the difference between (a) medicaid payments
34 received from the centers for medicare and medicaid services based on
35 the one hundred percent federal medical assistance percentage; and
36 (b) medicaid payments received from the centers for medicare and
37 medicaid services based on the federal medical assistance percentage
38 that would apply in the absence of state health official letter
39 16-002 and related guidance.

1 (13) "Reinvestment account" means the Indian health improvement
2 reinvestment account created in RCW 43.71B.040.

3 (14) "Reinvestment committee" means the Indian health improvement
4 reinvestment committee established in RCW 43.71B.020(4).

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

7 (16) "Tribally operated facility" means a health care facility
8 operated by one or more tribes or tribal organizations to provide
9 specialty services, including but not limited to evaluation and
10 treatment services, secure detox services, inpatient psychiatric
11 services, nursing home services, and residential substance use
12 disorder services.

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

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

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

32 (20) "Historical trauma" means situations where a community
33 experienced traumatic events, the events generated high levels of
34 collective distress, and the events were perpetuated by outsiders
35 with a destructive or genocidal intent.

36 **PART II**

37 **Sec. 201.** RCW 71.24.025 and 2019 c 325 s 1004 and 2019 c 324 s 2
38 are each reenacted and amended to read as follows:

1 Unless the context clearly requires otherwise, the definitions in
2 this section apply throughout this chapter.

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

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

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

10 (c) Presenting a likelihood of serious harm as defined in RCW
11 71.05.020 or, in the case of a child, as defined in RCW 71.34.020.

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

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

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

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

32 (6) "Behavioral health administrative services organization"
33 means an entity contracted with the authority to administer
34 behavioral health services and programs under RCW 71.24.381,
35 including crisis services and administration of chapter 71.05 RCW,
36 the involuntary treatment act, for all individuals in a defined
37 regional service area.

38 (7) "Behavioral health provider" means a person licensed under
39 chapter 18.57, 18.57A, 18.71, 18.71A, 18.83, 18.205, 18.225, or 18.79

1 RCW, as it applies to registered nurses and advanced registered nurse
2 practitioners.

3 (8) "Behavioral health services" means mental health services as
4 described in this chapter and chapter 71.36 RCW and substance use
5 disorder treatment services as described in this chapter that,
6 depending on the type of service, are provided by licensed or
7 certified behavioral health agencies, behavioral health providers, or
8 integrated into other health care providers.

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

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

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

15 (b) Has experienced a continuous psychiatric hospitalization or
16 residential treatment exceeding six months' duration within the
17 preceding year; or

18 (c) Has been unable to engage in any substantial gainful activity
19 by reason of any mental disorder which has lasted for a continuous
20 period of not less than twelve months. "Substantial gainful activity"
21 shall be defined by the authority by rule consistent with Public Law
22 92-603, as amended.

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

26 (12) "Community behavioral health program" means all
27 expenditures, services, activities, or programs, including reasonable
28 administration and overhead, designed and conducted to prevent or
29 treat substance use disorder, mental illness, or both in the
30 community behavioral health system.

31 (13) "Community behavioral health service delivery system" means
32 public, private, or tribal agencies that provide services
33 specifically to persons with mental disorders, substance use
34 disorders, or both, as defined under RCW 71.05.020 and receive
35 funding from public sources.

36 (14) "Community support services" means services authorized,
37 planned, and coordinated through resource management services
38 including, at a minimum, assessment, diagnosis, emergency crisis
39 intervention available twenty-four hours, seven days a week,
40 prescreening determinations for persons who are mentally ill being

1 considered for placement in nursing homes as required by federal law,
2 screening for patients being considered for admission to residential
3 services, diagnosis and treatment for children who are acutely
4 mentally ill or severely emotionally or behaviorally disturbed
5 discovered under screening through the federal Title XIX early and
6 periodic screening, diagnosis, and treatment program, investigation,
7 legal, and other nonresidential services under chapter 71.05 RCW,
8 case management services, psychiatric treatment including medication
9 supervision, counseling, psychotherapy, assuring transfer of relevant
10 patient information between service providers, recovery services, and
11 other services determined by behavioral health administrative
12 services organizations.

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

18 (16) "County authority" means the board of county commissioners,
19 county council, or county executive having authority to establish a
20 behavioral health administrative services organization, or two or
21 more of the county authorities specified in this subsection which
22 have entered into an agreement to establish a behavioral health
23 administrative services organization.

24 (17) "Department" means the department of health.

25 (18) "Designated crisis responder" has the same meaning as in RCW
26 71.05.020.

27 (19) "Director" means the director of the authority.

28 (20) "Drug addiction" means a disease characterized by a
29 dependency on psychoactive chemicals, loss of control over the amount
30 and circumstances of use, symptoms of tolerance, physiological or
31 psychological withdrawal, or both, if use is reduced or discontinued,
32 and impairment of health or disruption of social or economic
33 functioning.

34 (21) "Early adopter" means a regional service area for which all
35 of the county authorities have requested that the authority purchase
36 medical and behavioral health services through a managed care health
37 system as defined under RCW 71.24.380(6).

38 (22) "Emerging best practice" or "promising practice" means a
39 program or practice that, based on statistical analyses or a well
40 established theory of change, shows potential for meeting the

1 evidence-based or research-based criteria, which may include the use
2 of a program that is evidence-based for outcomes other than those
3 listed in subsection (23) of this section.

4 (23) "Evidence-based" means a program or practice that has been
5 tested in heterogeneous or intended populations with multiple
6 randomized, or statistically controlled evaluations, or both; or one
7 large multiple site randomized, or statistically controlled
8 evaluation, or both, where the weight of the evidence from a systemic
9 review demonstrates sustained improvements in at least one outcome.
10 "Evidence-based" also means a program or practice that can be
11 implemented with a set of procedures to allow successful replication
12 in Washington and, when possible, is determined to be cost-
13 beneficial.

14 (24) "Indian health care provider" means a health care program
15 operated by the Indian health service or by a tribe, tribal
16 organization, or urban Indian organization as those terms are defined
17 in the Indian health care improvement act (25 U.S.C. Sec. 1603).

18 (25) "Intensive behavioral health treatment facility" means a
19 community-based specialized residential treatment facility for
20 individuals with behavioral health conditions, including individuals
21 discharging from or being diverted from state and local hospitals,
22 whose impairment or behaviors do not meet, or no longer meet,
23 criteria for involuntary inpatient commitment under chapter 71.05
24 RCW, but whose care needs cannot be met in other community-based
25 placement settings.

26 (26) "Licensed or certified behavioral health agency" means:

27 (a) An entity licensed or certified according to this chapter or
28 chapter 71.05 RCW;

29 (b) An entity deemed to meet state minimum standards as a result
30 of accreditation by a recognized behavioral health accrediting body
31 recognized and having a current agreement with the department; or

32 (c) An entity with a tribal attestation that it meets state
33 minimum standards for a licensed or certified behavioral health
34 agency.

35 (27) "Licensed physician" means a person licensed to practice
36 medicine or osteopathic medicine and surgery in the state of
37 Washington.

38 (28) "Long-term inpatient care" means inpatient services for
39 persons committed for, or voluntarily receiving intensive treatment
40 for, periods of ninety days or greater under chapter 71.05 RCW.

1 "Long-term inpatient care" as used in this chapter does not include:
2 (a) Services for individuals committed under chapter 71.05 RCW who
3 are receiving services pursuant to a conditional release or a court-
4 ordered less restrictive alternative to detention; or (b) services
5 for individuals voluntarily receiving less restrictive alternative
6 treatment on the grounds of the state hospital.

7 (29) "Managed care organization" means an organization, having a
8 certificate of authority or certificate of registration from the
9 office of the insurance commissioner, that contracts with the
10 authority under a comprehensive risk contract to provide prepaid
11 health care services to enrollees under the authority's managed care
12 programs under chapter 74.09 RCW.

13 (30) "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 (31) Mental health "treatment records" include registration and
17 all other records concerning persons who are receiving or who at any
18 time have received services for mental illness, which are maintained
19 by the department of social and health services or the authority, by
20 behavioral health administrative services organizations and their
21 staffs, by managed care organizations and their staffs, or by
22 treatment facilities. "Treatment records" do not include notes or
23 records maintained for personal use by a person providing treatment
24 services for the entities listed in this subsection, or a treatment
25 facility if the notes or records are not available to others.

26 (32) "Mentally ill persons," "persons who are mentally ill," and
27 "the mentally ill" mean persons and conditions defined in subsections
28 (1), (10), (39), and (40) of this section.

29 (33) "Recovery" means a process of change through which
30 individuals improve their health and wellness, live a self-directed
31 life, and strive to reach their full potential.

32 (34) "Research-based" means a program or practice that has been
33 tested with a single randomized, or statistically controlled
34 evaluation, or both, demonstrating sustained desirable outcomes; or
35 where the weight of the evidence from a systemic review supports
36 sustained outcomes as described in subsection (23) of this section
37 but does not meet the full criteria for evidence-based.

38 (35) "Residential services" means a complete range of residences
39 and supports authorized by resource management services and which may
40 involve a facility, a distinct part thereof, or services which

1 support community living, for persons who are acutely mentally ill,
2 adults who are chronically mentally ill, children who are severely
3 emotionally disturbed, or adults who are seriously disturbed and
4 determined by the behavioral health administrative services
5 organization or managed care organization to be at risk of becoming
6 acutely or chronically mentally ill. The services shall include at
7 least evaluation and treatment services as defined in chapter 71.05
8 RCW, acute crisis respite care, long-term adaptive and rehabilitative
9 care, and supervised and supported living services, and shall also
10 include any residential services developed to service persons who are
11 mentally ill in nursing homes, residential treatment facilities,
12 assisted living facilities, and adult family homes, and may include
13 outpatient services provided as an element in a package of services
14 in a supported housing model. Residential services for children in
15 out-of-home placements related to their mental disorder shall not
16 include the costs of food and shelter, except for children's long-
17 term residential facilities existing prior to January 1, 1991.

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

21 (37) "Resource management services" mean the planning,
22 coordination, and authorization of residential services and community
23 support services administered pursuant to an individual service plan
24 for: (a) Adults and children who are acutely mentally ill; (b) adults
25 who are chronically mentally ill; (c) children who are severely
26 emotionally disturbed; or (d) adults who are seriously disturbed and
27 determined by a behavioral health administrative services
28 organization or managed care organization to be at risk of becoming
29 acutely or chronically mentally ill. Such planning, coordination, and
30 authorization shall include mental health screening for children
31 eligible under the federal Title XIX early and periodic screening,
32 diagnosis, and treatment program. Resource management services
33 include seven day a week, twenty-four hour a day availability of
34 information regarding enrollment of adults and children who are
35 mentally ill in services and their individual service plan to
36 designated crisis responders, evaluation and treatment facilities,
37 and others as determined by the behavioral health administrative
38 services organization or managed care organization, as applicable.

39 (38) "Secretary" means the secretary of the department of health.

40 (39) "Seriously disturbed person" means a person who:

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

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

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

10 (d) Exhibits suicidal preoccupation or attempts; or

11 (e) Is a child diagnosed by a mental health professional, as
12 defined in chapter 71.34 RCW, as experiencing a mental disorder which
13 is clearly interfering with the child's functioning in family or
14 school or with peers or is clearly interfering with the child's
15 personality development and learning.

16 (40) "Severely emotionally disturbed child" or "child who is
17 severely emotionally disturbed" means a child who has been determined
18 by the behavioral health administrative services organization or
19 managed care organization, if applicable, to be experiencing a mental
20 disorder as defined in chapter 71.34 RCW, including those mental
21 disorders that result in a behavioral or conduct disorder, that is
22 clearly interfering with the child's functioning in family or school
23 or with peers and who meets at least one of the following criteria:

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

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

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

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

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

34 (ii) Changes in custodial adult;

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

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

40 (v) Drug or alcohol abuse; or

1 (vi) Homelessness.

2 (41) "State minimum standards" means minimum requirements
3 established by rules adopted and necessary to implement this chapter
4 by:

5 (a) The authority for:

6 (i) Delivery of mental health and substance use disorder
7 services; and

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

9 (b) The department of health for:

10 (i) Licensed or certified behavioral health agencies for the
11 purpose of providing mental health or substance use disorder programs
12 and services, or both;

13 (ii) Licensed behavioral health providers for the provision of
14 mental health or substance use disorder services, or both; and

15 (iii) Residential services.

16 (42) "Substance use disorder" means a cluster of cognitive,
17 behavioral, and physiological symptoms indicating that an individual
18 continues using the substance despite significant substance-related
19 problems. The diagnosis of a substance use disorder is based on a
20 pathological pattern of behaviors related to the use of the
21 substances.

22 (43) "Tribe," for the purposes of this section, means a federally
23 recognized Indian tribe.

24 (44) "Behavioral health aide" means a counselor, health educator,
25 and advocate who helps address individual and community-based
26 behavioral health needs, including those related to alcohol, drug,
27 and tobacco abuse as well as mental health problems such as grief,
28 depression, suicide, and related issues and is certified by a
29 community health aide program of the Indian health service or one or
30 more tribes or tribal organizations consistent with the provisions of
31 25 U.S.C. Sec. 16161 and RCW 43.71B.010 (7) and (8).

32 **Sec. 202.** RCW 71.24.035 and 2019 c 325 s 1006 are each amended
33 to read as follows:

34 (1) The authority is designated as the state behavioral health
35 authority which includes recognition as the single state authority
36 for substance use disorders and state mental health authority.

37 (2) The director shall provide for public, client, tribal, and
38 licensed or certified behavioral health agency participation in
39 developing the state behavioral health program, developing related

1 contracts, and any waiver request to the federal government under
2 medicaid.

3 (3) The director shall provide for participation in developing
4 the state behavioral health program for children and other
5 underserved populations, by including representatives on any
6 committee established to provide oversight to the state behavioral
7 health program.

8 (4) The authority shall be designated as the behavioral health
9 administrative services organization for a regional service area if a
10 behavioral health administrative services organization fails to meet
11 the authority's contracting requirements or refuses to exercise the
12 responsibilities under its contract or state law, until such time as
13 a new behavioral health administrative services organization is
14 designated.

15 (5) The director shall:

16 (a) Assure that any behavioral health administrative services
17 organization, managed care organization, or community behavioral
18 health program provides medically necessary services to medicaid
19 recipients consistent with the state's medicaid state plan or federal
20 waiver authorities, and nonmedicaid services consistent with
21 priorities established by the authority;

22 (b) Develop contracts in a manner to ensure an adequate network
23 of inpatient services, evaluation and treatment services, and
24 facilities under chapter 71.05 RCW to ensure access to treatment,
25 resource management services, and community support services;

26 (c) Make contracts necessary or incidental to the performance of
27 its duties and the execution of its powers, including managed care
28 contracts for behavioral health services, contracts entered into
29 under RCW 74.09.522, and contracts with public and private agencies,
30 organizations, and individuals to pay them for behavioral health
31 services;

32 (d) Define administrative costs and ensure that the behavioral
33 health administrative services organization does not exceed an
34 administrative cost of ten percent of available funds;

35 (e) Establish, to the extent possible, a standardized auditing
36 procedure which is designed to assure compliance with contractual
37 agreements authorized by this chapter and minimizes paperwork
38 requirements. The audit procedure shall focus on the outcomes of
39 service as provided in RCW 71.24.435, 70.320.020, and 71.36.025;

1 (f) Develop and maintain an information system to be used by the
2 state and behavioral health administrative services organizations and
3 managed care organizations that includes a tracking method which
4 allows the authority to identify behavioral health clients'
5 participation in any behavioral health service or public program on
6 an immediate basis. The information system shall not include
7 individual patient's case history files. Confidentiality of client
8 information and records shall be maintained as provided in this
9 chapter and chapter 70.02 RCW;

10 (g) Monitor and audit behavioral health administrative services
11 organizations as needed to assure compliance with contractual
12 agreements authorized by this chapter;

13 (h) Monitor and audit access to behavioral health services for
14 individuals eligible for medicaid who are not enrolled in a managed
15 care organization;

16 (i) Adopt such rules as are necessary to implement the
17 authority's responsibilities under this chapter;

18 (j) Administer or supervise the administration of the provisions
19 relating to persons with substance use disorders and intoxicated
20 persons of any state plan submitted for federal funding pursuant to
21 federal health, welfare, or treatment legislation;

22 (k) Require the behavioral health administrative services
23 organizations and the managed care organizations to develop
24 agreements with tribal, city, and county jails and the department of
25 corrections to accept referrals for enrollment on behalf of a
26 confined person, prior to the person's release; ~~((and))~~

27 (l) Require behavioral health administrative services
28 organizations and managed care organizations, as applicable, to
29 provide services as identified in RCW 71.05.585 to individuals
30 committed for involuntary commitment under less restrictive
31 alternative court orders when:

32 (i) The individual is enrolled in the medicaid program; or

33 (ii) The individual is not enrolled in medicaid, does not have
34 other insurance which can pay for the services, and the behavioral
35 health administrative services organization has adequate available
36 resources to provide the services; and

37 (m) Coordinate with the centers for medicare and medicaid
38 services to provide that behavioral health aide services are eligible
39 for federal funding of up to one hundred percent.

1 (6) The director shall use available resources only for
2 behavioral health administrative services organizations and managed
3 care organizations, except:

4 (a) To the extent authorized, and in accordance with any
5 priorities or conditions specified, in the biennial appropriations
6 act; or

7 (b) To incentivize improved performance with respect to the
8 client outcomes established in RCW 71.24.435, 70.320.020, and
9 71.36.025, integration of behavioral health and medical services at
10 the clinical level, and improved care coordination for individuals
11 with complex care needs.

12 (7) Each behavioral health administrative services organization,
13 managed care organization, and licensed or certified behavioral
14 health agency shall file with the secretary of the department of
15 health or the director, on request, such data, statistics, schedules,
16 and information as the secretary of the department of health or the
17 director reasonably requires. A behavioral health administrative
18 services organization, managed care organization, or licensed or
19 certified behavioral health agency which, without good cause, fails
20 to furnish any data, statistics, schedules, or information as
21 requested, or files fraudulent reports thereof, may be subject to the
22 contractual remedies in RCW 74.09.871 or may have its service
23 provider certification or license revoked or suspended.

24 (8) The superior court may restrain any behavioral health
25 administrative services organization, managed care organization, or
26 service provider from operating without a contract, certification, or
27 a license or any other violation of this section. The court may also
28 review, pursuant to procedures contained in chapter 34.05 RCW, any
29 denial, suspension, limitation, restriction, or revocation of
30 certification or license, and grant other relief required to enforce
31 the provisions of this chapter.

32 (9) Upon petition by the secretary of the department of health or
33 the director, and after hearing held upon reasonable notice to the
34 facility, the superior court may issue a warrant to an officer or
35 employee of the secretary of the department of health or the director
36 authorizing him or her to enter at reasonable times, and examine the
37 records, books, and accounts of any behavioral health administrative
38 services organization, managed care organization, or service provider
39 refusing to consent to inspection or examination by the authority.

1 (10) Notwithstanding the existence or pursuit of any other
2 remedy, the secretary of the department of health or the director may
3 file an action for an injunction or other process against any person
4 or governmental unit to restrain or prevent the establishment,
5 conduct, or operation of a behavioral health administrative services
6 organization, managed care organization, or service provider without
7 a contract, certification, or a license under this chapter.

8 (11) The authority shall distribute appropriated state and
9 federal funds in accordance with any priorities, terms, or conditions
10 specified in the appropriations act.

11 (12) The authority, in cooperation with the state congressional
12 delegation, shall actively seek waivers of federal requirements and
13 such modifications of federal regulations as are necessary to allow
14 federal medicaid reimbursement for services provided by freestanding
15 evaluation and treatment facilities licensed under chapter 71.12 RCW
16 or certified under chapter 71.05 RCW. The authority shall
17 periodically share the results of its efforts with the appropriate
18 committees of the senate and the house of representatives.

19 (13) The authority may:

20 (a) Plan, establish, and maintain substance use disorder
21 prevention and substance use disorder treatment programs as necessary
22 or desirable;

23 (b) Coordinate its activities and cooperate with behavioral
24 programs in this and other states, and make contracts and other joint
25 or cooperative arrangements with state, tribal, local, or private
26 agencies in this and other states for behavioral health services and
27 for the common advancement of substance use disorder programs;

28 (c) Solicit and accept for use any gift of money or property made
29 by will or otherwise, and any grant of money, services, or property
30 from the federal government, the state, or any political subdivision
31 thereof or any private source, and do all things necessary to
32 cooperate with the federal government or any of its agencies in
33 making an application for any grant;

34 (d) Keep records and engage in research and the gathering of
35 relevant statistics; and

36 (e) Acquire, hold, or dispose of real property or any interest
37 therein, and construct, lease, or otherwise provide substance use
38 disorder treatment programs.

- 1 (6) "Authority" means the Washington state health care authority;
- 2 (7) "Co-occurring disorder specialist" means an individual
3 possessing an enhancement granted by the department of health under
4 chapter 18.205 RCW that certifies the individual to provide substance
5 use disorder counseling subject to the practice limitations under RCW
6 18.205.105;
- 7 (8) "Commitment" means the determination by a court that a person
8 should be detained for a period of either evaluation or treatment, or
9 both, in an inpatient or a less restrictive setting;
- 10 (9) "Conditional release" means a revocable modification of a
11 commitment, which may be revoked upon violation of any of its terms;
- 12 (10) "Crisis stabilization unit" means a short-term facility or a
13 portion of a facility licensed or certified by the department, such
14 as an evaluation and treatment facility or a hospital, which has been
15 designed to assess, diagnose, and treat individuals experiencing an
16 acute crisis without the use of long-term hospitalization;
- 17 (11) "Custody" means involuntary detention under the provisions
18 of this chapter or chapter 10.77 RCW, uninterrupted by any period of
19 unconditional release from commitment from a facility providing
20 involuntary care and treatment;
- 21 (12) "Department" means the department of health;
- 22 (13) "Designated crisis responder" means a mental health
23 professional appointed by the county (~~or~~), by an entity appointed
24 by the county, or by the authority in consultation with a federally
25 recognized Indian tribe or after meeting and conferring with an
26 Indian health care provider, to perform the duties specified in this
27 chapter;
- 28 (14) "Detention" or "detain" means the lawful confinement of a
29 person, under the provisions of this chapter;
- 30 (15) "Developmental disabilities professional" means a person who
31 has specialized training and three years of experience in directly
32 treating or working with persons with developmental disabilities and
33 is a psychiatrist, physician assistant working with a supervising
34 psychiatrist, psychologist, psychiatric advanced registered nurse
35 practitioner, or social worker, and such other developmental
36 disabilities professionals as may be defined by rules adopted by the
37 secretary of the department of social and health services;
- 38 (16) "Developmental disability" means that condition defined in
39 RCW 71A.10.020(5);
- 40 (17) "Director" means the director of the authority;

1 (18) "Discharge" means the termination of hospital medical
2 authority. The commitment may remain in place, be terminated, or be
3 amended by court order;

4 (19) "Drug addiction" means a disease, characterized by a
5 dependency on psychoactive chemicals, loss of control over the amount
6 and circumstances of use, symptoms of tolerance, physiological or
7 psychological withdrawal, or both, if use is reduced or discontinued,
8 and impairment of health or disruption of social or economic
9 functioning;

10 (20) "Evaluation and treatment facility" means any facility which
11 can provide directly, or by direct arrangement with other public or
12 private agencies, emergency evaluation and treatment, outpatient
13 care, and timely and appropriate inpatient care to persons suffering
14 from a mental disorder, and which is licensed or certified as such by
15 the department. The authority may certify single beds as temporary
16 evaluation and treatment beds under RCW 71.05.745. A physically
17 separate and separately operated portion of a state hospital may be
18 designated as an evaluation and treatment facility. A facility which
19 is part of, or operated by, the department of social and health
20 services or any federal agency will not require certification. No
21 correctional institution or facility, or jail, shall be an evaluation
22 and treatment facility within the meaning of this chapter;

23 (21) "Gravely disabled" means a condition in which a person, as a
24 result of a mental disorder, or as a result of the use of alcohol or
25 other psychoactive chemicals: (a) Is in danger of serious physical
26 harm resulting from a failure to provide for his or her essential
27 human needs of health or safety; or (b) manifests severe
28 deterioration in routine functioning evidenced by repeated and
29 escalating loss of cognitive or volitional control over his or her
30 actions and is not receiving such care as is essential for his or her
31 health or safety;

32 (22) "Habilitative services" means those services provided by
33 program personnel to assist persons in acquiring and maintaining life
34 skills and in raising their levels of physical, mental, social, and
35 vocational functioning. Habilitative services include education,
36 training for employment, and therapy. The habilitative process shall
37 be undertaken with recognition of the risk to the public safety
38 presented by the person being assisted as manifested by prior charged
39 criminal conduct;

1 (23) "Hearing" means any proceeding conducted in open court. For
2 purposes of this chapter, at any hearing the petitioner, the
3 respondent, the witnesses, and the presiding judicial officer may be
4 present and participate either in person or by video, as determined
5 by the court. The term "video" as used herein shall include any
6 functional equivalent. At any hearing conducted by video, the
7 technology used must permit the judicial officer, counsel, all
8 parties, and the witnesses to be able to see, hear, and speak, when
9 authorized, during the hearing; to allow attorneys to use exhibits or
10 other materials during the hearing; and to allow respondent's counsel
11 to be in the same location as the respondent unless otherwise
12 requested by the respondent or the respondent's counsel. Witnesses in
13 a proceeding may also appear in court through other means, including
14 telephonically, pursuant to the requirements of superior court civil
15 rule 43. Notwithstanding the foregoing, the court, upon its own
16 motion or upon a motion for good cause by any party, may require all
17 parties and witnesses to participate in the hearing in person rather
18 than by video. In ruling on any such motion, the court may allow in-
19 person or video testimony; and the court may consider, among other
20 things, whether the respondent's alleged mental illness affects the
21 respondent's ability to perceive or participate in the proceeding by
22 video;

23 (24) "History of one or more violent acts" refers to the period
24 of time ten years prior to the filing of a petition under this
25 chapter, excluding any time spent, but not any violent acts
26 committed, in a mental health facility, a long-term alcoholism or
27 drug treatment facility, or in confinement as a result of a criminal
28 conviction;

29 (25) "Imminent" means the state or condition of being likely to
30 occur at any moment or near at hand, rather than distant or remote;

31 (26) "In need of assisted outpatient behavioral health treatment"
32 means that a person, as a result of a mental disorder or substance
33 use disorder: (a) Has been committed by a court to detention for
34 involuntary behavioral health treatment during the preceding thirty-
35 six months; (b) is unlikely to voluntarily participate in outpatient
36 treatment without an order for less restrictive alternative
37 treatment, based on a history of nonadherence with treatment or in
38 view of the person's current behavior; (c) is likely to benefit from
39 less restrictive alternative treatment; and (d) requires less
40 restrictive alternative treatment to prevent a relapse,

1 decompensation, or deterioration that is likely to result in the
2 person presenting a likelihood of serious harm or the person becoming
3 gravely disabled within a reasonably short period of time;

4 (27) "Individualized service plan" means a plan prepared by a
5 developmental disabilities professional with other professionals as a
6 team, for a person with developmental disabilities, which shall
7 state:

8 (a) The nature of the person's specific problems, prior charged
9 criminal behavior, and habilitation needs;

10 (b) The conditions and strategies necessary to achieve the
11 purposes of habilitation;

12 (c) The intermediate and long-range goals of the habilitation
13 program, with a projected timetable for the attainment;

14 (d) The rationale for using this plan of habilitation to achieve
15 those intermediate and long-range goals;

16 (e) The staff responsible for carrying out the plan;

17 (f) Where relevant in light of past criminal behavior and due
18 consideration for public safety, the criteria for proposed movement
19 to less-restrictive settings, criteria for proposed eventual
20 discharge or release, and a projected possible date for discharge or
21 release; and

22 (g) The type of residence immediately anticipated for the person
23 and possible future types of residences;

24 (28) "Information related to mental health services" means all
25 information and records compiled, obtained, or maintained in the
26 course of providing services to either voluntary or involuntary
27 recipients of services by a mental health service provider. This may
28 include documents of legal proceedings under this chapter or chapter
29 71.34 or 10.77 RCW, or somatic health care information;

30 (29) "Intoxicated person" means a person whose mental or physical
31 functioning is substantially impaired as a result of the use of
32 alcohol or other psychoactive chemicals;

33 (30) "Judicial commitment" means a commitment by a court pursuant
34 to the provisions of this chapter;

35 (31) "Legal counsel" means attorneys and staff employed by county
36 prosecutor offices or the state attorney general acting in their
37 capacity as legal representatives of public mental health and
38 substance use disorder service providers under RCW 71.05.130;

1 (32) "Less restrictive alternative treatment" means a program of
2 individualized treatment in a less restrictive setting than inpatient
3 treatment that includes the services described in RCW 71.05.585;

4 (33) "Licensed physician" means a person licensed to practice
5 medicine or osteopathic medicine and surgery in the state of
6 Washington;

7 (34) "Likelihood of serious harm" means:

8 (a) A substantial risk that: (i) Physical harm will be inflicted
9 by a person upon his or her own person, as evidenced by threats or
10 attempts to commit suicide or inflict physical harm on oneself; (ii)
11 physical harm will be inflicted by a person upon another, as
12 evidenced by behavior which has caused such harm or which places
13 another person or persons in reasonable fear of sustaining such harm;
14 or (iii) physical harm will be inflicted by a person upon the
15 property of others, as evidenced by behavior which has caused
16 substantial loss or damage to the property of others; or

17 (b) The person has threatened the physical safety of another and
18 has a history of one or more violent acts;

19 (35) "Medical clearance" means a physician or other health care
20 provider has determined that a person is medically stable and ready
21 for referral to the designated crisis responder;

22 (36) "Mental disorder" means any organic, mental, or emotional
23 impairment which has substantial adverse effects on a person's
24 cognitive or volitional functions;

25 (37) "Mental health professional" means a psychiatrist,
26 psychologist, physician assistant working with a supervising
27 psychiatrist, psychiatric advanced registered nurse practitioner,
28 psychiatric nurse, or social worker, and such other mental health
29 professionals as may be defined by rules adopted by the secretary
30 pursuant to the provisions of this chapter;

31 (38) "Mental health service provider" means a public or private
32 agency that provides mental health services to persons with mental
33 disorders or substance use disorders as defined under this section
34 and receives funding from public sources. This includes, but is not
35 limited to, hospitals licensed under chapter 70.41 RCW, evaluation
36 and treatment facilities as defined in this section, community mental
37 health service delivery systems or community behavioral health
38 programs as defined in RCW 71.24.025, facilities conducting
39 competency evaluations and restoration under chapter 10.77 RCW,
40 approved substance use disorder treatment programs as defined in this

1 section, secure withdrawal management and stabilization facilities as
2 defined in this section, and correctional facilities operated by
3 state and local governments;

4 (39) "Peace officer" means a law enforcement official of a public
5 agency or governmental unit, and includes persons specifically given
6 peace officer powers by any state law, local ordinance, or judicial
7 order of appointment;

8 (40) "Physician assistant" means a person licensed as a physician
9 assistant under chapter 18.57A or 18.71A RCW;

10 (41) "Private agency" means any person, partnership, corporation,
11 or association that is not a public agency, whether or not financed
12 in whole or in part by public funds, which constitutes an evaluation
13 and treatment facility or private institution, or hospital, or
14 approved substance use disorder treatment program, which is conducted
15 for, or includes a department or ward conducted for, the care and
16 treatment of persons with mental illness, substance use disorders, or
17 both mental illness and substance use disorders;

18 (42) "Professional person" means a mental health professional,
19 substance use disorder professional, or designated crisis responder
20 and shall also mean a physician, physician assistant, psychiatric
21 advanced registered nurse practitioner, registered nurse, and such
22 others as may be defined by rules adopted by the secretary pursuant
23 to the provisions of this chapter;

24 (43) "Psychiatric advanced registered nurse practitioner" means a
25 person who is licensed as an advanced registered nurse practitioner
26 pursuant to chapter 18.79 RCW; and who is board certified in advanced
27 practice psychiatric and mental health nursing;

28 (44) "Psychiatrist" means a person having a license as a
29 physician and surgeon in this state who has in addition completed
30 three years of graduate training in psychiatry in a program approved
31 by the American medical association or the American osteopathic
32 association and is certified or eligible to be certified by the
33 American board of psychiatry and neurology;

34 (45) "Psychologist" means a person who has been licensed as a
35 psychologist pursuant to chapter 18.83 RCW;

36 (46) "Public agency" means any evaluation and treatment facility
37 or institution, secure withdrawal management and stabilization
38 facility, approved substance use disorder treatment program, or
39 hospital which is conducted for, or includes a department or ward
40 conducted for, the care and treatment of persons with mental illness,

1 substance use disorders, or both mental illness and substance use
2 disorders, if the agency is operated directly by federal, state,
3 county, or municipal government, or a combination of such
4 governments;

5 (47) "Release" means legal termination of the commitment under
6 the provisions of this chapter;

7 (48) "Resource management services" has the meaning given in
8 chapter 71.24 RCW;

9 (49) "Secretary" means the secretary of the department of health,
10 or his or her designee;

11 (50) "Secure withdrawal management and stabilization facility"
12 means a facility operated by either a public or private agency or by
13 the program of an agency which provides care to voluntary individuals
14 and individuals involuntarily detained and committed under this
15 chapter for whom there is a likelihood of serious harm or who are
16 gravely disabled due to the presence of a substance use disorder.
17 Secure withdrawal management and stabilization facilities must:

18 (a) Provide the following services:

19 (i) Assessment and treatment, provided by certified substance use
20 disorder professionals or co-occurring disorder specialists;

21 (ii) Clinical stabilization services;

22 (iii) Acute or subacute detoxification services for intoxicated
23 individuals; and

24 (iv) Discharge assistance provided by certified substance use
25 disorder professionals or co-occurring disorder specialists, including
26 facilitating transitions to appropriate voluntary or involuntary
27 inpatient services or to less restrictive alternatives as appropriate
28 for the individual;

29 (b) Include security measures sufficient to protect the patients,
30 staff, and community; and

31 (c) Be licensed or certified as such by the department of health;

32 (51) "Serious violent offense" has the same meaning as provided
33 in RCW 9.94A.030;

34 (52) "Social worker" means a person with a master's or further
35 advanced degree from a social work educational program accredited and
36 approved as provided in RCW 18.320.010;

37 (53) "Substance use disorder" means a cluster of cognitive,
38 behavioral, and physiological symptoms indicating that an individual
39 continues using the substance despite significant substance-related
40 problems. The diagnosis of a substance use disorder is based on a

1 pathological pattern of behaviors related to the use of the
2 substances;

3 (54) "Substance use disorder professional" means a person
4 certified as a substance use disorder professional by the department
5 of health under chapter 18.205 RCW;

6 (55) "Therapeutic court personnel" means the staff of a mental
7 health court or other therapeutic court which has jurisdiction over
8 defendants who are dually diagnosed with mental disorders, including
9 court personnel, probation officers, a court monitor, prosecuting
10 attorney, or defense counsel acting within the scope of therapeutic
11 court duties;

12 (56) "Treatment records" include registration and all other
13 records concerning persons who are receiving or who at any time have
14 received services for mental illness, which are maintained by the
15 department of social and health services, the department, the
16 authority, behavioral health administrative services organizations
17 and their staffs, managed care organizations and their staffs, and by
18 treatment facilities. Treatment records include mental health
19 information contained in a medical bill including but not limited to
20 mental health drugs, a mental health diagnosis, provider name, and
21 dates of service stemming from a medical service. Treatment records
22 do not include notes or records maintained for personal use by a
23 person providing treatment services for the department of social and
24 health services, the department, the authority, behavioral health
25 administrative services organizations, managed care organizations, or
26 a treatment facility if the notes or records are not available to
27 others;

28 (57) "Triage facility" means a short-term facility or a portion
29 of a facility licensed or certified by the department, which is
30 designed as a facility to assess and stabilize an individual or
31 determine the need for involuntary commitment of an individual, and
32 must meet department residential treatment facility standards. A
33 triage facility may be structured as a voluntary or involuntary
34 placement facility;

35 (58) "Violent act" means behavior that resulted in homicide,
36 attempted suicide, nonfatal injuries, or substantial damage to
37 property.

38 **Sec. 302.** RCW 71.05.150 and 2019 c 446 s 4 are each amended to
39 read as follows:

1 (1) When a designated crisis responder receives information
2 alleging that a person, as a result of a mental disorder, substance
3 use disorder, or both presents a likelihood of serious harm or is
4 gravely disabled, or that a person is in need of assisted outpatient
5 behavioral health treatment; the designated crisis responder may,
6 after investigation and evaluation of the specific facts alleged and
7 of the reliability and credibility of any person providing
8 information to initiate detention or involuntary outpatient
9 treatment, if satisfied that the allegations are true and that the
10 person will not voluntarily seek appropriate treatment, file a
11 petition for initial detention under this section or a petition for
12 involuntary outpatient behavioral health treatment under RCW
13 71.05.148. Before filing the petition, the designated crisis
14 responder must personally interview the person, unless the person
15 refuses an interview, and determine whether the person will
16 voluntarily receive appropriate evaluation and treatment at an
17 evaluation and treatment facility, crisis stabilization unit, triage
18 facility, or approved substance use disorder treatment program.

19 (2)(a) An order to detain a person with a mental disorder to a
20 designated evaluation and treatment facility, or to detain a person
21 with a substance use disorder to a secure withdrawal management and
22 stabilization facility or approved substance use disorder treatment
23 program, for not more than a seventy-two-hour evaluation and
24 treatment period may be issued by a judge of the superior court upon
25 request of a designated crisis responder, subject to (d) of this
26 subsection, whenever it appears to the satisfaction of a judge of the
27 superior court:

28 (i) That there is probable cause to support the petition; and

29 (ii) That the person has refused or failed to accept appropriate
30 evaluation and treatment voluntarily.

31 (b) The petition for initial detention, signed under penalty of
32 perjury, or sworn telephonic testimony may be considered by the court
33 in determining whether there are sufficient grounds for issuing the
34 order.

35 (c) The order shall designate retained counsel or, if counsel is
36 appointed from a list provided by the court, the name, business
37 address, and telephone number of the attorney appointed to represent
38 the person.

39 (d) A court may not issue an order to detain a person to a secure
40 withdrawal management and stabilization facility or approved

1 substance use disorder treatment program unless there is an available
2 secure withdrawal management and stabilization facility or approved
3 substance use disorder treatment program that has adequate space for
4 the person.

5 (3) The designated crisis responder shall then serve or cause to
6 be served on such person, his or her guardian, and conservator, if
7 any, a copy of the order together with a notice of rights, and a
8 petition for initial detention. After service on such person the
9 designated crisis responder shall file the return of service in court
10 and provide copies of all papers in the court file to the evaluation
11 and treatment facility, secure withdrawal management and
12 stabilization facility, or approved substance use disorder treatment
13 program, and the designated attorney. The designated crisis responder
14 shall notify the court and the prosecuting attorney that a probable
15 cause hearing will be held within seventy-two hours of the date and
16 time of outpatient evaluation or admission to the evaluation and
17 treatment facility, secure withdrawal management and stabilization
18 facility, or approved substance use disorder treatment program. The
19 person shall be permitted to be accompanied by one or more of his or
20 her relatives, friends, an attorney, a personal physician, or other
21 professional or religious advisor to the place of evaluation. An
22 attorney accompanying the person to the place of evaluation shall be
23 permitted to be present during the admission evaluation. Any other
24 individual accompanying the person may be present during the
25 admission evaluation. The facility may exclude the individual if his
26 or her presence would present a safety risk, delay the proceedings,
27 or otherwise interfere with the evaluation.

28 (4) The designated crisis responder may notify a peace officer to
29 take such person or cause such person to be taken into custody and
30 placed in an evaluation and treatment facility, secure withdrawal
31 management and stabilization facility, or approved substance use
32 disorder treatment program. At the time such person is taken into
33 custody there shall commence to be served on such person, his or her
34 guardian, and conservator, if any, a copy of the original order
35 together with a notice of rights and a petition for initial
36 detention.

37 (5) An Indian tribe shall have jurisdiction exclusive to the
38 state as to any involuntary commitment of an American Indian or
39 Alaska Native to an evaluation and treatment facility located within
40 the boundaries of that tribe, unless the tribe has consented to the

1 state's concurrent jurisdiction, or the tribe has expressly declined
2 to exercise its exclusive jurisdiction.

3 (6) Tribal court orders for involuntary commitment shall be
4 recognized and enforced in accordance with superior court civil rule
5 82.5.

6 (7) In any investigation and evaluation of an individual under
7 RCW 71.05.150 or 71.05.153 in which the designated crisis responder
8 knows, or has reason to know, that the individual is an American
9 Indian or Alaska Native who receives medical or behavioral health
10 services from a tribe within this state, the designated crisis
11 responder shall notify the tribe or Indian health care provider
12 regarding whether or not a petition for initial detention or
13 involuntary outpatient treatment will be filed. Notification shall be
14 made in person or by telephonic or electronic communication to the
15 tribal contact listed in the authority's tribal crisis coordination
16 plan as soon as possible but no later than three hours subject to the
17 requirements in RCW 70.02.230 (2)(dd) and (3). A designated crisis
18 responder may restrict the release of information as necessary to
19 comply with 42 C.F.R. Part 2.

20 **Sec. 303.** RCW 71.05.150 and 2019 c 446 s 5 are each amended to
21 read as follows:

22 (1) When a designated crisis responder receives information
23 alleging that a person, as a result of a mental disorder, substance
24 use disorder, or both presents a likelihood of serious harm or is
25 gravely disabled, or that a person is in need of assisted outpatient
26 behavioral health treatment; the designated crisis responder may,
27 after investigation and evaluation of the specific facts alleged and
28 of the reliability and credibility of any person providing
29 information to initiate detention or involuntary outpatient
30 treatment, if satisfied that the allegations are true and that the
31 person will not voluntarily seek appropriate treatment, file a
32 petition for initial detention under this section or a petition for
33 involuntary outpatient behavioral health treatment under RCW
34 71.05.148. Before filing the petition, the designated crisis
35 responder must personally interview the person, unless the person
36 refuses an interview, and determine whether the person will
37 voluntarily receive appropriate evaluation and treatment at an
38 evaluation and treatment facility, crisis stabilization unit, triage
39 facility, or approved substance use disorder treatment program.

1 (2) (a) An order to detain a person with a mental disorder to a
2 designated evaluation and treatment facility, or to detain a person
3 with a substance use disorder to a secure withdrawal management and
4 stabilization facility or approved substance use disorder treatment
5 program, for not more than a seventy-two-hour evaluation and
6 treatment period may be issued by a judge of the superior court upon
7 request of a designated crisis responder whenever it appears to the
8 satisfaction of a judge of the superior court:

9 (i) That there is probable cause to support the petition; and

10 (ii) That the person has refused or failed to accept appropriate
11 evaluation and treatment voluntarily.

12 (b) The petition for initial detention, signed under penalty of
13 perjury, or sworn telephonic testimony may be considered by the court
14 in determining whether there are sufficient grounds for issuing the
15 order.

16 (c) The order shall designate retained counsel or, if counsel is
17 appointed from a list provided by the court, the name, business
18 address, and telephone number of the attorney appointed to represent
19 the person.

20 (3) The designated crisis responder shall then serve or cause to
21 be served on such person, his or her guardian, and conservator, if
22 any, a copy of the order together with a notice of rights, and a
23 petition for initial detention. After service on such person the
24 designated crisis responder shall file the return of service in court
25 and provide copies of all papers in the court file to the evaluation
26 and treatment facility, secure withdrawal management and
27 stabilization facility, or approved substance use disorder treatment
28 program, and the designated attorney. The designated crisis responder
29 shall notify the court and the prosecuting attorney that a probable
30 cause hearing will be held within seventy-two hours of the date and
31 time of outpatient evaluation or admission to the evaluation and
32 treatment facility, secure withdrawal management and stabilization
33 facility, or approved substance use disorder treatment program. The
34 person shall be permitted to be accompanied by one or more of his or
35 her relatives, friends, an attorney, a personal physician, or other
36 professional or religious advisor to the place of evaluation. An
37 attorney accompanying the person to the place of evaluation shall be
38 permitted to be present during the admission evaluation. Any other
39 individual accompanying the person may be present during the
40 admission evaluation. The facility may exclude the individual if his

1 or her presence would present a safety risk, delay the proceedings,
2 or otherwise interfere with the evaluation.

3 (4) The designated crisis responder may notify a peace officer to
4 take such person or cause such person to be taken into custody and
5 placed in an evaluation and treatment facility, secure withdrawal
6 management and stabilization facility, or approved substance use
7 disorder treatment program. At the time such person is taken into
8 custody there shall commence to be served on such person, his or her
9 guardian, and conservator, if any, a copy of the original order
10 together with a notice of rights and a petition for initial
11 detention.

12 (5) An Indian tribe shall have jurisdiction exclusive to the
13 state as to any involuntary commitment of an American Indian or
14 Alaska Native to an evaluation and treatment facility located within
15 the boundaries of that tribe, unless the tribe has consented to the
16 state's concurrent jurisdiction, or the tribe has expressly declined
17 to exercise its exclusive jurisdiction.

18 (6) Tribal court orders for involuntary commitment shall be
19 recognized and enforced in accordance with superior court civil rule
20 82.5.

21 (7) In any investigation and evaluation of an individual under
22 RCW 71.05.150 or 71.05.153 in which the designated crisis responder
23 knows, or has reason to know, that the individual is an American
24 Indian or Alaska Native who receives medical or behavioral health
25 services from a tribe within this state, the designated crisis
26 responder shall notify the tribe or Indian health care provider
27 regarding whether or not a petition for initial detention or
28 involuntary outpatient treatment will be filed. Notification shall be
29 made in person or by telephonic or electronic communication to the
30 tribal contact listed in the authority's tribal crisis coordination
31 plan as soon as possible but no later than three hours subject to the
32 requirements in RCW 70.02.230 (2) (dd) and (3). A designated crisis
33 responder may restrict the release of information as necessary to
34 comply with 42 C.F.R. Part 2.

35 **Sec. 304.** RCW 71.05.201 and 2018 c 291 s 11 are each amended to
36 read as follows:

37 (1) If a designated crisis responder decides not to detain a
38 person for evaluation and treatment under RCW 71.05.150 or 71.05.153
39 or forty-eight hours have elapsed since a designated crisis responder

1 received a request for investigation and the designated crisis
2 responder has not taken action to have the person detained, an
3 immediate family member or guardian or conservator of the person, or
4 a federally recognized Indian tribe if the person is a member of such
5 tribe, may petition the superior court for the person's initial
6 detention.

7 (2) A petition under this section must be filed within ten
8 calendar days following the designated crisis responder investigation
9 or the request for a designated crisis responder investigation. If
10 more than ten days have elapsed, the immediate family member,
11 guardian, or conservator may request a new designated crisis
12 responder investigation.

13 (3) (a) The petition must be filed in the county in which the
14 designated crisis responder investigation occurred or was requested
15 to occur and must be submitted on forms developed by the
16 administrative office of the courts for this purpose. The petition
17 must be accompanied by a sworn declaration from the petitioner, and
18 other witnesses if desired, describing why the person should be
19 detained for evaluation and treatment. The description of why the
20 person should be detained may contain, but is not limited to, the
21 information identified in RCW 71.05.212.

22 (b) The petition must contain:

23 (i) A description of the relationship between the petitioner and
24 the person; and

25 (ii) The date on which an investigation was requested from the
26 designated crisis responder.

27 (4) The court shall, within one judicial day, review the petition
28 to determine whether the petition raises sufficient evidence to
29 support the allegation. If the court so finds, it shall provide a
30 copy of the petition to the designated crisis responder agency with
31 an order for the agency to provide the court, within one judicial
32 day, with a written sworn statement describing the basis for the
33 decision not to seek initial detention and a copy of all information
34 material to the designated crisis responder's current decision.

35 (5) Following the filing of the petition and before the court
36 reaches a decision, any person, including a mental health
37 professional, may submit a sworn declaration to the court in support
38 of or in opposition to initial detention.

39 (6) The court shall dismiss the petition at any time if it finds
40 that a designated crisis responder has filed a petition for the

1 person's initial detention under RCW 71.05.150 or 71.05.153 or that
2 the person has voluntarily accepted appropriate treatment.

3 (7) The court must issue a final ruling on the petition within
4 five judicial days after it is filed. After reviewing all of the
5 information provided to the court, the court may enter an order for
6 initial detention or an order instructing the designated crisis
7 responder to file a petition for assisted outpatient behavioral
8 health treatment if the court finds that: (a) There is probable cause
9 to support a petition for detention or assisted outpatient behavioral
10 health treatment; and (b) the person has refused or failed to accept
11 appropriate evaluation and treatment voluntarily. The court shall
12 transmit its final decision to the petitioner.

13 (8) If the court enters an order for initial detention, it shall
14 provide the order to the designated crisis responder agency and issue
15 a written order for apprehension of the person by a peace officer for
16 delivery of the person to a facility or emergency room determined by
17 the designated crisis responder. The designated crisis responder
18 agency serving the jurisdiction of the court must collaborate and
19 coordinate with law enforcement regarding apprehensions and
20 detentions under this subsection, including sharing of information
21 relating to risk and which would assist in locating the person. A
22 person may not be detained to jail pursuant to a written order issued
23 under this subsection. An order for detention under this section
24 should contain the advisement of rights which the person would
25 receive if the person were detained by a designated crisis responder.
26 An order for initial detention under this section expires one hundred
27 eighty days from issuance.

28 (9) Except as otherwise expressly stated in this chapter, all
29 procedures must be followed as if the order had been entered under
30 RCW 71.05.150. RCW 71.05.160 does not apply if detention was
31 initiated under the process set forth in this section.

32 (10) For purposes of this section, "immediate family member"
33 means a spouse, domestic partner, child, stepchild, parent,
34 stepparent, grandparent, or sibling.

35 **Sec. 305.** RCW 71.05.212 and 2018 c 291 s 13 are each amended to
36 read as follows:

37 (1) Whenever a designated crisis responder or professional person
38 is conducting an evaluation under this chapter, consideration shall

1 include all reasonably available information from credible witnesses
2 and records regarding:

3 (a) Prior recommendations for evaluation of the need for civil
4 commitments when the recommendation is made pursuant to an evaluation
5 conducted under chapter 10.77 RCW;

6 (b) Historical behavior, including history of one or more violent
7 acts;

8 (c) Prior determinations of incompetency or insanity under
9 chapter 10.77 RCW; and

10 (d) Prior commitments under this chapter.

11 (2) Credible witnesses may include family members, landlords,
12 neighbors, or others with significant contact and history of
13 involvement with the person. If the designated crisis responder
14 relies upon information from a credible witness in reaching his or
15 her decision to detain the individual, then he or she must provide
16 contact information for any such witness to the prosecutor. The
17 designated crisis responder or prosecutor shall provide notice of the
18 date, time, and location of the probable cause hearing to such a
19 witness.

20 (3) Symptoms and behavior of the respondent which standing alone
21 would not justify civil commitment may support a finding of grave
22 disability or likelihood of serious harm, or a finding that the
23 person is in need of assisted outpatient behavioral health treatment,
24 when:

25 (a) Such symptoms or behavior are closely associated with
26 symptoms or behavior which preceded and led to a past incident of
27 involuntary hospitalization, severe deterioration, or one or more
28 violent acts;

29 (b) These symptoms or behavior represent a marked and concerning
30 change in the baseline behavior of the respondent; and

31 (c) Without treatment, the continued deterioration of the
32 respondent is probable.

33 (4) When conducting an evaluation for offenders identified under
34 RCW 72.09.370, the designated crisis responder or professional person
35 shall consider an offender's history of judicially required or
36 administratively ordered antipsychotic medication while in
37 confinement.

38 (5) The authority, in consultation with tribes and coordination
39 with Indian health care providers and the American Indian health
40 commission for Washington state, shall establish written guidelines

1 by June 30, 2021, for conducting culturally appropriate evaluations
2 of American Indians or Alaska Natives.

3 **Sec. 306.** RCW 71.05.435 and 2019 c 446 s 26 are each amended to
4 read as follows:

5 (1) Whenever a person who is the subject of an involuntary
6 commitment order under this chapter is discharged from an evaluation
7 and treatment facility, state hospital, secure withdrawal management
8 and stabilization facility, or approved substance use disorder
9 treatment program providing involuntary treatment services, the
10 entity discharging the person shall provide notice of the person's
11 discharge to the designated crisis responder office responsible for
12 the initial commitment, which may be a federally recognized Indian
13 tribe or other Indian health care provider if the designated crisis
14 responder is appointed by the authority, and the designated crisis
15 responder office that serves the county in which the person is
16 expected to reside. The entity discharging the person must also
17 provide these offices with a copy of any less restrictive order or
18 conditional release order entered in conjunction with the discharge
19 of the person, unless the entity discharging the person has entered
20 into a memorandum of understanding obligating another entity to
21 provide these documents.

22 (2) The notice and documents referred to in subsection (1) of
23 this section shall be provided as soon as possible and no later than
24 one business day following the discharge of the person. Notice is not
25 required under this section if the discharge is for the purpose of
26 transferring the person for continued detention and treatment under
27 this chapter at another treatment facility.

28 (3) The authority shall maintain and make available an updated
29 list of contact information for designated crisis responder offices
30 around the state.

31 NEW SECTION. **Sec. 307.** A new section is added to chapter 71.24
32 RCW to read as follows:

33 (1) The authority shall provide an annual report on psychiatric
34 treatment and evaluation and bed utilization for American Indians and
35 Alaska Natives starting on October 1, 2020. The report shall be
36 available for review by the tribes, urban Indian health programs, and
37 the American Indian health commission for Washington state.

1 (2) Indian health care providers shall be included in any bed
2 tracking system created by the authority.

3 **PART IV**

4 **Sec. 401.** RCW 70.02.010 and 2019 c 325 s 5019 are each amended
5 to read as follows:

6 The definitions in this section apply throughout this chapter
7 unless the context clearly requires otherwise.

8 (1) "Admission" has the same meaning as in RCW 71.05.020.

9 (2) "Audit" means an assessment, evaluation, determination, or
10 investigation of a health care provider by a person not employed by
11 or affiliated with the provider to determine compliance with:

12 (a) Statutory, regulatory, fiscal, medical, or scientific
13 standards;

14 (b) A private or public program of payments to a health care
15 provider; or

16 (c) Requirements for licensing, accreditation, or certification.

17 (3) "Authority" means the Washington state health care authority.

18 (4) "Commitment" has the same meaning as in RCW 71.05.020.

19 (5) "Custody" has the same meaning as in RCW 71.05.020.

20 (6) "Deidentified" means health information that does not
21 identify an individual and with respect to which there is no
22 reasonable basis to believe that the information can be used to
23 identify an individual.

24 (7) "Department" means the department of social and health
25 services.

26 (8) "Designated crisis responder" has the same meaning as in RCW
27 71.05.020 or 71.34.020, as applicable.

28 (9) "Detention" or "detain" has the same meaning as in RCW
29 71.05.020.

30 (10) "Directory information" means information disclosing the
31 presence, and for the purpose of identification, the name, location
32 within a health care facility, and the general health condition of a
33 particular patient who is a patient in a health care facility or who
34 is currently receiving emergency health care in a health care
35 facility.

36 (11) "Discharge" has the same meaning as in RCW 71.05.020.

37 (12) "Evaluation and treatment facility" has the same meaning as
38 in RCW 71.05.020 or 71.34.020, as applicable.

1 (13) "Federal, state, or local law enforcement authorities" means
2 an officer of any agency or authority in the United States, a state,
3 a tribe, a territory, or a political subdivision of a state, a tribe,
4 or a territory who is empowered by law to: (a) Investigate or conduct
5 an official inquiry into a potential criminal violation of law; or
6 (b) prosecute or otherwise conduct a criminal proceeding arising from
7 an alleged violation of law.

8 (14) "General health condition" means the patient's health status
9 described in terms of "critical," "poor," "fair," "good,"
10 "excellent," or terms denoting similar conditions.

11 (15) "Health care" means any care, service, or procedure provided
12 by a health care provider:

13 (a) To diagnose, treat, or maintain a patient's physical or
14 mental condition; or

15 (b) That affects the structure or any function of the human body.

16 (16) "Health care facility" means a hospital, clinic, nursing
17 home, laboratory, office, or similar place where a health care
18 provider provides health care to patients.

19 (17) "Health care information" means any information, whether
20 oral or recorded in any form or medium, that identifies or can
21 readily be associated with the identity of a patient and directly
22 relates to the patient's health care, including a patient's
23 deoxyribonucleic acid and identified sequence of chemical base pairs.
24 The term includes any required accounting of disclosures of health
25 care information.

26 (18) "Health care operations" means any of the following
27 activities of a health care provider, health care facility, or third-
28 party payor to the extent that the activities are related to
29 functions that make an entity a health care provider, a health care
30 facility, or a third-party payor:

31 (a) Conducting: Quality assessment and improvement activities,
32 including outcomes evaluation and development of clinical guidelines,
33 if the obtaining of generalizable knowledge is not the primary
34 purpose of any studies resulting from such activities; population-
35 based activities relating to improving health or reducing health care
36 costs, protocol development, case management and care coordination,
37 contacting of health care providers and patients with information
38 about treatment alternatives; and related functions that do not
39 include treatment;

1 (b) Reviewing the competence or qualifications of health care
2 professionals, evaluating practitioner and provider performance and
3 third-party payor performance, conducting training programs in which
4 students, trainees, or practitioners in areas of health care learn
5 under supervision to practice or improve their skills as health care
6 providers, training of nonhealth care professionals, accreditation,
7 certification, licensing, or credentialing activities;

8 (c) Underwriting, premium rating, and other activities relating
9 to the creation, renewal, or replacement of a contract of health
10 insurance or health benefits, and ceding, securing, or placing a
11 contract for reinsurance of risk relating to claims for health care,
12 including stop-loss insurance and excess of loss insurance, if any
13 applicable legal requirements are met;

14 (d) Conducting or arranging for medical review, legal services,
15 and auditing functions, including fraud and abuse detection and
16 compliance programs;

17 (e) Business planning and development, such as conducting cost-
18 management and planning-related analyses related to managing and
19 operating the health care facility or third-party payor, including
20 formulary development and administration, development, or improvement
21 of methods of payment or coverage policies; and

22 (f) Business management and general administrative activities of
23 the health care facility, health care provider, or third-party payor
24 including, but not limited to:

25 (i) Management activities relating to implementation of and
26 compliance with the requirements of this chapter;

27 (ii) Customer service, including the provision of data analyses
28 for policy holders, plan sponsors, or other customers, provided that
29 health care information is not disclosed to such policy holder, plan
30 sponsor, or customer;

31 (iii) Resolution of internal grievances;

32 (iv) The sale, transfer, merger, or consolidation of all or part
33 of a health care provider, health care facility, or third-party payor
34 with another health care provider, health care facility, or third-
35 party payor or an entity that following such activity will become a
36 health care provider, health care facility, or third-party payor, and
37 due diligence related to such activity; and

38 (v) Consistent with applicable legal requirements, creating
39 deidentified health care information or a limited dataset for the

1 benefit of the health care provider, health care facility, or third-
2 party payor.

3 (19) "Health care provider" means a person who is licensed,
4 certified, registered, or otherwise authorized by the law of this
5 state to provide health care in the ordinary course of business or
6 practice of a profession.

7 (20) "Human immunodeficiency virus" or "HIV" has the same meaning
8 as in RCW 70.24.017.

9 (21) "Imminent" has the same meaning as in RCW 71.05.020.

10 (22) "Information and records related to mental health services"
11 means a type of health care information that relates to all
12 information and records compiled, obtained, or maintained in the
13 course of providing services by a mental health service agency or
14 mental health professional to persons who are receiving or have
15 received services for mental illness. The term includes mental health
16 information contained in a medical bill, registration records, as
17 defined in RCW 70.97.010, and all other records regarding the person
18 maintained by the department, by the authority, by behavioral health
19 administrative services organizations and their staff, managed care
20 organizations contracted with the authority under chapter 74.09 RCW
21 and their staff, and by treatment facilities. The term further
22 includes documents of legal proceedings under chapter 71.05, 71.34,
23 or 10.77 RCW, or somatic health care information. For health care
24 information maintained by a hospital as defined in RCW 70.41.020 or a
25 health care facility or health care provider that participates with a
26 hospital in an organized health care arrangement defined under
27 federal law, "information and records related to mental health
28 services" is limited to information and records of services provided
29 by a mental health professional or information and records of
30 services created by a hospital-operated community behavioral health
31 program as defined in RCW 71.24.025. The term does not include
32 psychotherapy notes.

33 (23) "Information and records related to sexually transmitted
34 diseases" means a type of health care information that relates to the
35 identity of any person upon whom an HIV antibody test or other
36 sexually transmitted infection test is performed, the results of such
37 tests, and any information relating to diagnosis of or treatment for
38 any confirmed sexually transmitted infections.

39 (24) "Institutional review board" means any board, committee, or
40 other group formally designated by an institution, or authorized

1 under federal or state law, to review, approve the initiation of, or
2 conduct periodic review of research programs to assure the protection
3 of the rights and welfare of human research subjects.

4 (25) "Legal counsel" has the same meaning as in RCW 71.05.020.

5 (26) "Local public health officer" has the same meaning as in RCW
6 70.24.017.

7 (27) "Maintain," as related to health care information, means to
8 hold, possess, preserve, retain, store, or control that information.

9 (28) "Mental health professional" means a psychiatrist,
10 psychologist, psychiatric advanced registered nurse practitioner,
11 psychiatric nurse, or social worker, and such other mental health
12 professionals as may be defined by rules adopted by the secretary of
13 health under chapter 71.05 RCW, whether that person works in a
14 private or public setting.

15 (29) "Mental health service agency" means a public or private
16 agency that provides services to persons with mental disorders as
17 defined under RCW 71.05.020 or 71.34.020 and receives funding from
18 public sources. This includes evaluation and treatment facilities as
19 defined in RCW 71.34.020, community mental health service delivery
20 systems, or community behavioral health programs, as defined in RCW
21 71.24.025, and facilities conducting competency evaluations and
22 restoration under chapter 10.77 RCW.

23 (30) "Minor" has the same meaning as in RCW 71.34.020.

24 (31) "Parent" has the same meaning as in RCW 71.34.020.

25 (32) "Patient" means an individual who receives or has received
26 health care. The term includes a deceased individual who has received
27 health care.

28 (33) "Payment" means:

29 (a) The activities undertaken by:

30 (i) A third-party payor to obtain premiums or to determine or
31 fulfill its responsibility for coverage and provision of benefits by
32 the third-party payor; or

33 (ii) A health care provider, health care facility, or third-party
34 payor, to obtain or provide reimbursement for the provision of health
35 care; and

36 (b) The activities in (a) of this subsection that relate to the
37 patient to whom health care is provided and that include, but are not
38 limited to:

1 (i) Determinations of eligibility or coverage, including
2 coordination of benefits or the determination of cost-sharing
3 amounts, and adjudication or subrogation of health benefit claims;

4 (ii) Risk adjusting amounts due based on enrollee health status
5 and demographic characteristics;

6 (iii) Billing, claims management, collection activities,
7 obtaining payment under a contract for reinsurance, including stop-
8 loss insurance and excess of loss insurance, and related health care
9 data processing;

10 (iv) Review of health care services with respect to medical
11 necessity, coverage under a health plan, appropriateness of care, or
12 justification of charges;

13 (v) Utilization review activities, including precertification and
14 preauthorization of services, and concurrent and retrospective review
15 of services; and

16 (vi) Disclosure to consumer reporting agencies of any of the
17 following health care information relating to collection of premiums
18 or reimbursement:

19 (A) Name and address;

20 (B) Date of birth;

21 (C) Social security number;

22 (D) Payment history;

23 (E) Account number; and

24 (F) Name and address of the health care provider, health care
25 facility, and/or third-party payor.

26 (34) "Person" means an individual, corporation, business trust,
27 estate, trust, partnership, association, joint venture, government,
28 governmental subdivision or agency, or any other legal or commercial
29 entity.

30 (35) "Professional person" has the same meaning as in RCW
31 71.05.020.

32 (36) "Psychiatric advanced registered nurse practitioner" has the
33 same meaning as in RCW 71.05.020.

34 (37) "Psychotherapy notes" means notes recorded, in any medium,
35 by a mental health professional documenting or analyzing the contents
36 of conversations during a private counseling session or group, joint,
37 or family counseling session, and that are separated from the rest of
38 the individual's medical record. The term excludes mediation
39 prescription and monitoring, counseling session start and stop times,
40 the modalities and frequencies of treatment furnished, results of

1 clinical tests, and any summary of the following items: Diagnosis,
2 functional status, the treatment plan, symptoms, prognosis, and
3 progress to date.

4 (38) "Reasonable fee" means the charges for duplicating or
5 searching the record, but shall not exceed sixty-five cents per page
6 for the first thirty pages and fifty cents per page for all other
7 pages. In addition, a clerical fee for searching and handling may be
8 charged not to exceed fifteen dollars. These amounts shall be
9 adjusted biennially in accordance with changes in the consumer price
10 index, all consumers, for Seattle-Tacoma metropolitan statistical
11 area as determined by the secretary of health. However, where editing
12 of records by a health care provider is required by statute and is
13 done by the provider personally, the fee may be the usual and
14 customary charge for a basic office visit.

15 (39) "Release" has the same meaning as in RCW 71.05.020.

16 (40) "Resource management services" has the same meaning as in
17 RCW 71.05.020.

18 (41) "Serious violent offense" has the same meaning as in RCW
19 71.05.020.

20 (42) "Sexually transmitted infection" or "sexually transmitted
21 disease" has the same meaning as "sexually transmitted disease" in
22 RCW 70.24.017.

23 (43) "Test for a sexually transmitted disease" has the same
24 meaning as in RCW 70.24.017.

25 (44) "Third-party payor" means an insurer regulated under Title
26 48 RCW authorized to transact business in this state or other
27 jurisdiction, including a health care service contractor, and health
28 maintenance organization; or an employee welfare benefit plan,
29 excluding fitness or wellness plans; or a state or federal health
30 benefit program.

31 (45) "Treatment" means the provision, coordination, or management
32 of health care and related services by one or more health care
33 providers or health care facilities, including the coordination or
34 management of health care by a health care provider or health care
35 facility with a third party; consultation between health care
36 providers or health care facilities relating to a patient; or the
37 referral of a patient for health care from one health care provider
38 or health care facility to another.

39 (46) "Managed care organization" has the same meaning as provided
40 in RCW 71.24.025.

1 (47) "Indian health care provider" has the same meaning as in RCW
2 43.71B.010(10).

3 **Sec. 402.** RCW 70.02.230 and 2019 c 381 s 19, 2019 c 325 s 5020,
4 and 2019 c 317 s 2 are each reenacted and amended to read as follows:

5 (1) Except as provided in this section, RCW 70.02.050, 71.05.445,
6 74.09.295, 70.02.210, 70.02.240, 70.02.250, 70.02.260, and 70.02.265,
7 or pursuant to a valid authorization under RCW 70.02.030, the fact of
8 admission to a provider for mental health services and all
9 information and records compiled, obtained, or maintained in the
10 course of providing mental health services to either voluntary or
11 involuntary recipients of services at public or private agencies must
12 be confidential.

13 (2) Information and records related to mental health services,
14 other than those obtained through treatment under chapter 71.34 RCW,
15 may be disclosed only:

16 (a) In communications between qualified professional persons to
17 meet the requirements of chapter 71.05 RCW, including Indian health
18 care providers, in the provision of services or appropriate
19 referrals, or in the course of guardianship proceedings if provided
20 to a professional person:

21 (i) Employed by the facility;

22 (ii) Who has medical responsibility for the patient's care;

23 (iii) Who is a designated crisis responder;

24 (iv) Who is providing services under chapter 71.24 RCW;

25 (v) Who is employed by a state or local correctional facility
26 where the person is confined or supervised; or

27 (vi) Who is providing evaluation, treatment, or follow-up
28 services under chapter 10.77 RCW;

29 (b) When the communications regard the special needs of a patient
30 and the necessary circumstances giving rise to such needs and the
31 disclosure is made by a facility providing services to the operator
32 of a facility in which the patient resides or will reside;

33 (c) (i) When the person receiving services, or his or her
34 guardian, designates persons to whom information or records may be
35 released, or if the person is a minor, when his or her parents make
36 such a designation;

37 (ii) A public or private agency shall release to a person's next
38 of kin, attorney, personal representative, guardian, or conservator,
39 if any:

1 (A) The information that the person is presently a patient in the
2 facility or that the person is seriously physically ill;

3 (B) A statement evaluating the mental and physical condition of
4 the patient, and a statement of the probable duration of the
5 patient's confinement, if such information is requested by the next
6 of kin, attorney, personal representative, guardian, or conservator;
7 and

8 (iii) Other information requested by the next of kin or attorney
9 as may be necessary to decide whether or not proceedings should be
10 instituted to appoint a guardian or conservator;

11 (d) (i) To the courts, including tribal courts, as necessary to
12 the administration of chapter 71.05 RCW or to a court ordering an
13 evaluation or treatment under chapter 10.77 RCW solely for the
14 purpose of preventing the entry of any evaluation or treatment order
15 that is inconsistent with any order entered under chapter 71.05 RCW.

16 (ii) To a court or its designee in which a motion under chapter
17 10.77 RCW has been made for involuntary medication of a defendant for
18 the purpose of competency restoration.

19 (iii) Disclosure under this subsection is mandatory for the
20 purpose of the federal health insurance portability and
21 accountability act;

22 (e) (i) When a mental health professional or designated crisis
23 responder is requested by a representative of a law enforcement or
24 corrections agency, including a police officer, sheriff, community
25 corrections officer, a municipal attorney, or prosecuting attorney to
26 undertake an investigation or provide treatment under RCW 71.05.150,
27 10.31.110, or 71.05.153, the mental health professional or designated
28 crisis responder shall, if requested to do so, advise the
29 representative in writing of the results of the investigation
30 including a statement of reasons for the decision to detain or
31 release the person investigated. The written report must be submitted
32 within seventy-two hours of the completion of the investigation or
33 the request from the law enforcement or corrections representative,
34 whichever occurs later.

35 (ii) Disclosure under this subsection is mandatory for the
36 purposes of the federal health insurance portability and
37 accountability act;

38 (f) To the attorney of the detained person;

39 (g) To the prosecuting attorney as necessary to carry out the
40 responsibilities of the office under RCW 71.05.330(2),

1 71.05.340(1)(b), and 71.05.335. The prosecutor must be provided
2 access to records regarding the committed person's treatment and
3 prognosis, medication, behavior problems, and other records relevant
4 to the issue of whether treatment less restrictive than inpatient
5 treatment is in the best interest of the committed person or others.
6 Information must be disclosed only after giving notice to the
7 committed person and the person's counsel;

8 (h)(i) To appropriate law enforcement agencies and to a person,
9 when the identity of the person is known to the public or private
10 agency, whose health and safety has been threatened, or who is known
11 to have been repeatedly harassed, by the patient. The person may
12 designate a representative to receive the disclosure. The disclosure
13 must be made by the professional person in charge of the public or
14 private agency or his or her designee and must include the dates of
15 commitment, admission, discharge, or release, authorized or
16 unauthorized absence from the agency's facility, and only any other
17 information that is pertinent to the threat or harassment. The agency
18 or its employees are not civilly liable for the decision to disclose
19 or not, so long as the decision was reached in good faith and without
20 gross negligence.

21 (ii) Disclosure under this subsection is mandatory for the
22 purposes of the federal health insurance portability and
23 accountability act;

24 (i)(i) To appropriate corrections and law enforcement agencies
25 all necessary and relevant information in the event of a crisis or
26 emergent situation that poses a significant and imminent risk to the
27 public. The mental health service agency or its employees are not
28 civilly liable for the decision to disclose or not so long as the
29 decision was reached in good faith and without gross negligence.

30 (ii) Disclosure under this subsection is mandatory for the
31 purposes of the health insurance portability and accountability act;

32 (j) To the persons designated in RCW 71.05.425 for the purposes
33 described in those sections;

34 (k) Upon the death of a person. The person's next of kin,
35 personal representative, guardian, or conservator, if any, must be
36 notified. Next of kin who are of legal age and competent must be
37 notified under this section in the following order: Spouse, parents,
38 children, brothers and sisters, and other relatives according to the
39 degree of relation. Access to all records and information compiled,

1 obtained, or maintained in the course of providing services to a
2 deceased patient are governed by RCW 70.02.140;

3 (l) To mark headstones or otherwise memorialize patients interred
4 at state hospital cemeteries. The department of social and health
5 services shall make available the name, date of birth, and date of
6 death of patients buried in state hospital cemeteries fifty years
7 after the death of a patient;

8 (m) To law enforcement officers and to prosecuting attorneys as
9 are necessary to enforce RCW 9.41.040(2)(a)(iv). The extent of
10 information that may be released is limited as follows:

11 (i) Only the fact, place, and date of involuntary commitment, an
12 official copy of any order or orders of commitment, and an official
13 copy of any written or oral notice of ineligibility to possess a
14 firearm that was provided to the person pursuant to RCW 9.41.047(1),
15 must be disclosed upon request;

16 (ii) The law enforcement and prosecuting attorneys may only
17 release the information obtained to the person's attorney as required
18 by court rule and to a jury or judge, if a jury is waived, that
19 presides over any trial at which the person is charged with violating
20 RCW 9.41.040(2)(a)(iv);

21 (iii) Disclosure under this subsection is mandatory for the
22 purposes of the federal health insurance portability and
23 accountability act;

24 (n) When a patient would otherwise be subject to the provisions
25 of this section and disclosure is necessary for the protection of the
26 patient or others due to his or her unauthorized disappearance from
27 the facility, and his or her whereabouts is unknown, notice of the
28 disappearance, along with relevant information, may be made to
29 relatives, the department of corrections when the person is under the
30 supervision of the department, and governmental law enforcement
31 agencies designated by the physician or psychiatric advanced
32 registered nurse practitioner in charge of the patient or the
33 professional person in charge of the facility, or his or her
34 professional designee;

35 (o) Pursuant to lawful order of a court, including a tribal
36 court;

37 (p) To qualified staff members of the department, to the
38 authority, to behavioral health administrative services
39 organizations, to managed care organizations, to resource management
40 services responsible for serving a patient, or to service providers

1 designated by resource management services as necessary to determine
2 the progress and adequacy of treatment and to determine whether the
3 person should be transferred to a less restrictive or more
4 appropriate treatment modality or facility;

5 (q) Within the mental health service agency or Indian health care
6 provider facility where the patient is receiving treatment,
7 confidential information may be disclosed to persons employed,
8 serving in bona fide training programs, or participating in
9 supervised volunteer programs, at the facility when it is necessary
10 to perform their duties;

11 (r) Within the department and the authority as necessary to
12 coordinate treatment for mental illness, developmental disabilities,
13 alcoholism, or substance use disorder of persons who are under the
14 supervision of the department;

15 (s) Between the department of social and health services, the
16 department of children, youth, and families, and the health care
17 authority as necessary to coordinate treatment for mental illness,
18 developmental disabilities, alcoholism, or drug abuse of persons who
19 are under the supervision of the department of social and health
20 services or the department of children, youth, and families;

21 (t) To a licensed physician or psychiatric advanced registered
22 nurse practitioner who has determined that the life or health of the
23 person is in danger and that treatment without the information and
24 records related to mental health services could be injurious to the
25 patient's health. Disclosure must be limited to the portions of the
26 records necessary to meet the medical emergency;

27 (u)(i) Consistent with the requirements of the federal health
28 insurance portability and accountability act, to:

29 (A) A health care provider, including an Indian health care
30 provider, who is providing care to a patient, or to whom a patient
31 has been referred for evaluation or treatment; or

32 (B) Any other person who is working in a care coordinator role
33 for a health care facility (~~(or)~~) health care provider, or Indian
34 health care provider, or is under an agreement pursuant to the
35 federal health insurance portability and accountability act with a
36 health care facility or a health care provider and requires the
37 information and records to assure coordinated care and treatment of
38 that patient.

39 (ii) A person authorized to use or disclose information and
40 records related to mental health services under this subsection

1 (2)(u) must take appropriate steps to protect the information and
2 records relating to mental health services.

3 (iii) Psychotherapy notes may not be released without
4 authorization of the patient who is the subject of the request for
5 release of information;

6 (v) To administrative and office support staff designated to
7 obtain medical records for those licensed professionals listed in (u)
8 of this subsection;

9 (w) To a facility that is to receive a person who is
10 involuntarily committed under chapter 71.05 RCW, or upon transfer of
11 the person from one evaluation and treatment facility to another. The
12 release of records under this subsection is limited to the
13 information and records related to mental health services required by
14 law, a record or summary of all somatic treatments, and a discharge
15 summary. The discharge summary may include a statement of the
16 patient's problem, the treatment goals, the type of treatment which
17 has been provided, and recommendation for future treatment, but may
18 not include the patient's complete treatment record;

19 (x) To the person's counsel or guardian ad litem, without
20 modification, at any time in order to prepare for involuntary
21 commitment or recommitment proceedings, reexaminations, appeals, or
22 other actions relating to detention, admission, commitment, or
23 patient's rights under chapter 71.05 RCW;

24 (y) To staff members of the protection and advocacy agency or to
25 staff members of a private, nonprofit corporation for the purpose of
26 protecting and advocating the rights of persons with mental disorders
27 or developmental disabilities. Resource management services may limit
28 the release of information to the name, birthdate, and county of
29 residence of the patient, information regarding whether the patient
30 was voluntarily admitted, or involuntarily committed, the date and
31 place of admission, placement, or commitment, the name and address of
32 a guardian of the patient, and the date and place of the guardian's
33 appointment. Any staff member who wishes to obtain additional
34 information must notify the patient's resource management services in
35 writing of the request and of the resource management services' right
36 to object. The staff member shall send the notice by mail to the
37 guardian's address. If the guardian does not object in writing within
38 fifteen days after the notice is mailed, the staff member may obtain
39 the additional information. If the guardian objects in writing within

1 fifteen days after the notice is mailed, the staff member may not
2 obtain the additional information;

3 (z) To all current treating providers, including Indian health
4 care providers, of the patient with prescriptive authority who have
5 written a prescription for the patient within the last twelve months.
6 For purposes of coordinating health care, the department or the
7 authority may release without written authorization of the patient,
8 information acquired for billing and collection purposes as described
9 in RCW 70.02.050(1)(d). The department, or the authority, if
10 applicable, shall notify the patient that billing and collection
11 information has been released to named providers, and provide the
12 substance of the information released and the dates of such release.
13 Neither the department nor the authority may release counseling,
14 inpatient psychiatric hospitalization, or drug and alcohol treatment
15 information without a signed written release from the client;

16 (aa)(i) To the secretary of social and health services and the
17 director of the health care authority for either program evaluation
18 or research, or both so long as the secretary or director, where
19 applicable, adopts rules for the conduct of the evaluation or
20 research, or both. Such rules must include, but need not be limited
21 to, the requirement that all evaluators and researchers sign an oath
22 of confidentiality substantially as follows:

23 "As a condition of conducting evaluation or research concerning
24 persons who have received services from (fill in the facility,
25 agency, or person) I,, agree not to divulge, publish, or
26 otherwise make known to unauthorized persons or the public any
27 information obtained in the course of such evaluation or research
28 regarding persons who have received services such that the person who
29 received such services is identifiable.

30 I recognize that unauthorized release of confidential information
31 may subject me to civil liability under the provisions of state law.
32 /s/"

33 (ii) Nothing in this chapter may be construed to prohibit the
34 compilation and publication of statistical data for use by government
35 or researchers under standards, including standards to assure
36 maintenance of confidentiality, set forth by the secretary, or
37 director, where applicable;

38 (bb) To any person if the conditions in RCW 70.02.205 are met;

1 (cc) To the secretary of health for the purposes of the maternal
2 mortality review panel established in RCW 70.54.450;

3 (dd) To a tribe or Indian health care provider to carry out the
4 requirements of RCW 71.05.150(7).

5 (3) Whenever federal law or federal regulations restrict the
6 release of information contained in the information and records
7 related to mental health services of any patient who receives
8 treatment for a substance use disorder, the department or the
9 authority may restrict the release of the information as necessary to
10 comply with federal law and regulations.

11 (4) Civil liability and immunity for the release of information
12 about a particular person who is committed to the department of
13 social and health services or the authority under RCW 71.05.280(3)
14 and 71.05.320(4)(c) after dismissal of a sex offense as defined in
15 RCW 9.94A.030, is governed by RCW 4.24.550.

16 (5) The fact of admission to a provider of mental health
17 services, as well as all records, files, evidence, findings, or
18 orders made, prepared, collected, or maintained pursuant to chapter
19 71.05 RCW are not admissible as evidence in any legal proceeding
20 outside that chapter without the written authorization of the person
21 who was the subject of the proceeding except as provided in RCW
22 70.02.260, in a subsequent criminal prosecution of a person committed
23 pursuant to RCW 71.05.280(3) or 71.05.320(4)(c) on charges that were
24 dismissed pursuant to chapter 10.77 RCW due to incompetency to stand
25 trial, in a civil commitment proceeding pursuant to chapter 71.09
26 RCW, or, in the case of a minor, a guardianship or dependency
27 proceeding. The records and files maintained in any court proceeding
28 pursuant to chapter 71.05 RCW must be confidential and available
29 subsequent to such proceedings only to the person who was the subject
30 of the proceeding or his or her attorney. In addition, the court may
31 order the subsequent release or use of such records or files only
32 upon good cause shown if the court finds that appropriate safeguards
33 for strict confidentiality are and will be maintained.

34 (6)(a) Except as provided in RCW 4.24.550, any person may bring
35 an action against an individual who has willfully released
36 confidential information or records concerning him or her in
37 violation of the provisions of this section, for the greater of the
38 following amounts:

39 (i) One thousand dollars; or

40 (ii) Three times the amount of actual damages sustained, if any.

1 (b) It is not a prerequisite to recovery under this subsection
2 that the plaintiff suffered or was threatened with special, as
3 contrasted with general, damages.

4 (c) Any person may bring an action to enjoin the release of
5 confidential information or records concerning him or her or his or
6 her ward, in violation of the provisions of this section, and may in
7 the same action seek damages as provided in this subsection.

8 (d) The court may award to the plaintiff, should he or she
9 prevail in any action authorized by this subsection, reasonable
10 attorney fees in addition to those otherwise provided by law.

11 (e) If an action is brought under this subsection, no action may
12 be brought under RCW 70.02.170.

13 **PART V**

14 NEW SECTION. **Sec. 501.** Section 302 of this act expires July 1,
15 2026.

16 NEW SECTION. **Sec. 502.** Section 303 of this act takes effect
17 July 1, 2026.

18 NEW SECTION. **Sec. 503.** Section 203 of this act takes effect
19 July 1, 2021.

Passed by the Senate March 10, 2020.

Passed by the House March 5, 2020.

Approved by the Governor March 31, 2020.

Filed in Office of Secretary of State March 31, 2020.

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