

2SHB 1394 - S COMM AMD  
By Committee on Ways & Means

ADOPTED AND ENGROSSED 4/17/19

1 Strike everything after the enacting clause and insert the  
2 following:

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

13 Therefore, the legislature intends to provide more options in the  
14 continuum of care for behavioral health clients by creating new  
15 facility types and by expanding the capacity of current provider  
16 types in the community.

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

19 Unless the context clearly requires otherwise, the definitions in  
20 this section apply throughout this chapter.

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

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

25 (b) Being gravely disabled as defined in RCW 71.05.020 or, in the  
26 case of a child, a gravely disabled minor as defined in RCW  
27 71.34.020; or

28 (c) Presenting a likelihood of serious harm as defined in RCW  
29 71.05.020 or, in the case of a child, as defined in RCW 71.34.020.

30 (2) "Alcoholism" means a disease, characterized by a dependency  
31 on alcoholic beverages, loss of control over the amount and

1 circumstances of use, symptoms of tolerance, physiological or  
2 psychological withdrawal, or both, if use is reduced or discontinued,  
3 and impairment of health or disruption of social or economic  
4 functioning.

5 (3) "Approved substance use disorder treatment program" means a  
6 program for persons with a substance use disorder provided by a  
7 treatment program licensed or certified by the department as meeting  
8 standards adopted under this chapter.

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

10 (5) "Available resources" means funds appropriated for the  
11 purpose of providing community mental health programs, federal funds,  
12 except those provided according to Title XIX of the Social Security  
13 Act, and state funds appropriated under this chapter or chapter 71.05  
14 RCW by the legislature during any biennium for the purpose of  
15 providing residential services, resource management services,  
16 community support services, and other mental health services. This  
17 does not include funds appropriated for the purpose of operating and  
18 administering the state psychiatric hospitals.

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

22 (7) "Behavioral health program" means all expenditures, services,  
23 activities, or programs, including reasonable administration and  
24 overhead, designed and conducted to prevent or treat chemical  
25 dependency and mental illness.

26 (8) "Behavioral health services" means mental health services as  
27 described in this chapter and chapter 71.36 RCW and substance use  
28 disorder treatment services as described in this chapter.

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

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

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

35 (b) Has experienced a continuous psychiatric hospitalization or  
36 residential treatment exceeding six months' duration within the  
37 preceding year; or

38 (c) Has been unable to engage in any substantial gainful activity  
39 by reason of any mental disorder which has lasted for a continuous  
40 period of not less than twelve months. "Substantial gainful activity"

1 shall be defined by the authority by rule consistent with Public Law  
2 92-603, as amended.

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

6 (12) "Community mental health service delivery system" means  
7 public, private, or tribal agencies that provide services  
8 specifically to persons with mental disorders as defined under RCW  
9 71.05.020 and receive funding from public sources.

10 (13) "Community support services" means services authorized,  
11 planned, and coordinated through resource management services  
12 including, at a minimum, assessment, diagnosis, emergency crisis  
13 intervention available twenty-four hours, seven days a week,  
14 prescreening determinations for persons who are mentally ill being  
15 considered for placement in nursing homes as required by federal law,  
16 screening for patients being considered for admission to residential  
17 services, diagnosis and treatment for children who are acutely  
18 mentally ill or severely emotionally disturbed discovered under  
19 screening through the federal Title XIX early and periodic screening,  
20 diagnosis, and treatment program, investigation, legal, and other  
21 nonresidential services under chapter 71.05 RCW, case management  
22 services, psychiatric treatment including medication supervision,  
23 counseling, psychotherapy, assuring transfer of relevant patient  
24 information between service providers, recovery services, and other  
25 services determined by behavioral health organizations.

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

31 (15) "County authority" means the board of county commissioners,  
32 county council, or county executive having authority to establish a  
33 community mental health program, or two or more of the county  
34 authorities specified in this subsection which have entered into an  
35 agreement to provide a community mental health program.

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

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

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

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

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

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

17 (22) "Evidence-based" means a program or practice that has been  
18 tested in heterogeneous or intended populations with multiple  
19 randomized, or statistically controlled evaluations, or both; or one  
20 large multiple site randomized, or statistically controlled  
21 evaluation, or both, where the weight of the evidence from a systemic  
22 review demonstrates sustained improvements in at least one outcome.  
23 "Evidence-based" also means a program or practice that can be  
24 implemented with a set of procedures to allow successful replication  
25 in Washington and, when possible, is determined to be cost-  
26 beneficial.

27 (23) "Licensed physician" means a person licensed to practice  
28 medicine or osteopathic medicine and surgery in the state of  
29 Washington.

30 (24) "Licensed or certified service provider" means an entity  
31 licensed or certified according to this chapter or chapter 71.05 RCW  
32 or an entity deemed to meet state minimum standards as a result of  
33 accreditation by a recognized behavioral health accrediting body  
34 recognized and having a current agreement with the department, or  
35 tribal attestation that meets state minimum standards, or persons  
36 licensed under chapter 18.57, 18.57A, 18.71, 18.71A, 18.83, or 18.79  
37 RCW, as it applies to registered nurses and advanced registered nurse  
38 practitioners.

39 (25) "Long-term inpatient care" means inpatient services for  
40 persons committed for, or voluntarily receiving intensive treatment

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

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

11 (27) Mental health "treatment records" include registration and  
12 all other records concerning persons who are receiving or who at any  
13 time have received services for mental illness, which are maintained  
14 by the department of social and health services or the authority, by  
15 behavioral health organizations and their staffs, or by treatment  
16 facilities. "Treatment records" do not include notes or records  
17 maintained for personal use by a person providing treatment services  
18 for the department of social and health services, behavioral health  
19 organizations, or a treatment facility if the notes or records are  
20 not available to others.

21 (28) "Mentally ill persons," "persons who are mentally ill," and  
22 "the mentally ill" mean persons and conditions defined in subsections  
23 (1), (10), ~~((36))~~ (35), and ~~((37))~~ (36) of this section.

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

26 ~~(30) "Registration records" include all the records of the  
27 department of social and health services, the authority, behavioral  
28 health organizations, treatment facilities, and other persons  
29 providing services for the department of social and health services,  
30 the authority, county departments, or facilities which identify  
31 persons who are receiving or who at any time have received services  
32 for mental illness)) a process of change through which individuals  
33 improve their health and wellness, live a self-directed life, and  
34 strive to reach their full potential.~~

35 ~~((31))~~ (30) "Research-based" means a program or practice that  
36 has been tested with a single randomized, or statistically controlled  
37 evaluation, or both, demonstrating sustained desirable outcomes; or  
38 where the weight of the evidence from a systemic review supports  
39 sustained outcomes as described in subsection (22) of this section  
40 but does not meet the full criteria for evidence-based.

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

21        (~~(33)~~) (32) "Resilience" means the personal and community  
22 qualities that enable individuals to rebound from adversity, trauma,  
23 tragedy, threats, or other stresses, and to live productive lives.

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

1       (~~(35)~~) (34) "Secretary" means the secretary of the department  
2 of health.

3       (~~(36)~~) (35) "Seriously disturbed person" means a person who:

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

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

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

13       (d) Exhibits suicidal preoccupation or attempts; or

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

19       (~~(37)~~) (36) "Severely emotionally disturbed child" or "child  
20 who is severely emotionally disturbed" means a child who has been  
21 determined by the behavioral health organization to be experiencing a  
22 mental disorder as defined in chapter 71.34 RCW, including those  
23 mental disorders that result in a behavioral or conduct disorder,  
24 that is clearly interfering with the child's functioning in family or  
25 school or with peers and who meets at least one of the following  
26 criteria:

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

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

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

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

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

37       (ii) Changes in custodial adult;

38       (iii) Going to, residing in, or returning from any placement  
39 outside of the home, for example, psychiatric hospital, short-term

1 inpatient, residential treatment, group or foster home, or a  
2 correctional facility;

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

4 (v) Drug or alcohol abuse; or

5 (vi) Homelessness.

6 (~~(38)~~) (37) "State minimum standards" means minimum  
7 requirements established by rules adopted and necessary to implement  
8 this chapter by:

9 (a) The authority for:

10 (i) Delivery of mental health and substance use disorder  
11 services; and

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

13 (b) The department of health for:

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

16 (ii) Residential services.

17 (~~(39)~~) (38) "Substance use disorder" means a cluster of  
18 cognitive, behavioral, and physiological symptoms indicating that an  
19 individual continues using the substance despite significant  
20 substance-related problems. The diagnosis of a substance use disorder  
21 is based on a pathological pattern of behaviors related to the use of  
22 the substances.

23 (~~(40)~~) (39) "Tribal authority," for the purposes of this  
24 section and RCW 71.24.300 only, means: The federally recognized  
25 Indian tribes and the major Indian organizations recognized by the  
26 director insofar as these organizations do not have a financial  
27 relationship with any behavioral health organization that would  
28 present a conflict of interest.

29 (40) "Intensive behavioral health treatment facility" means a  
30 community-based specialized residential treatment facility for  
31 individuals with behavioral health conditions, including individuals  
32 discharging from or being diverted from state and local hospitals,  
33 whose impairment or behaviors do not meet, or no longer meet,  
34 criteria for involuntary inpatient commitment under chapter 71.05  
35 RCW, but whose care needs cannot be met in other community-based  
36 placement settings.

37 (41) "Mental health peer respite center" means a peer-run program  
38 to serve individuals in need of voluntary, short-term, noncrisis  
39 services that focus on recovery and wellness.



1        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 71.24  
2    RCW to read as follows:

3        The secretary shall license or certify intensive behavioral  
4    health treatment facilities that meet state minimum standards. The  
5    secretary must establish rules working with the authority and the  
6    department of social and health services to create standards for  
7    licensure or certification of intensive behavioral health treatment  
8    facilities. The rules, at a minimum, must:

9        (1) Clearly define clinical eligibility criteria in alignment  
10   with how "intensive behavioral health treatment facility" is defined  
11   in RCW 71.24.025;

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

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

16        (4) Establish requirements for the ability to provide services  
17   and an appropriate level of care to individuals with intellectual or  
18   developmental disabilities. The requirements must include staffing  
19   and training;

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

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

25        (7) Limit services to persons at least eighteen years of age; and

26        (8) Establish resident rights that are substantially similar to  
27   the rights of residents in long-term care facilities.

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

30        By December 1, 2019, the secretary of health, in consultation  
31   with the department of social and health services, the department of  
32   commerce, the long-term care ombuds, and relevant stakeholders must  
33   provide recommendations to the governor and the appropriate  
34   committees of the legislature on providing resident rights and access  
35   to ombuds services to the residents of the intensive behavioral  
36   health treatment facilities.

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

1 The secretary shall license or certify mental health peer respite  
2 centers that meet state minimum standards. In consultation with the  
3 authority and the department of social and health services, the  
4 secretary must:

5 (1) Establish requirements for licensed and certified community  
6 behavioral health agencies to provide mental health peer respite  
7 center services and establish physical plant and service requirements  
8 to provide voluntary, short-term, noncrisis services that focus on  
9 recovery and wellness;

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

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

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

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

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

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

22 (1) The authority and the entities identified in RCW 71.24.310  
23 and 71.24.380 shall: (a) Work with willing community hospitals  
24 licensed under chapters 70.41 and 71.12 RCW and evaluation and  
25 treatment facilities licensed or certified under chapter 71.05 RCW to  
26 assess their capacity to become licensed or certified to provide  
27 long-term inpatient care and to meet the requirements of this  
28 chapter; and (b) enter into contracts and payment arrangements with  
29 such hospitals and evaluation and treatment facilities choosing to  
30 provide long-term mental health placements, to the extent that  
31 willing licensed or certified facilities are available.

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

35 NEW SECTION. **Sec. 7.** By November 15, 2019, the health care  
36 authority shall confer with the department of health, hospitals  
37 licensed under chapters 70.41 and 71.12 RCW, and evaluation and  
38 treatment facilities licensed or certified under chapter 71.05 RCW to

1 review laws and regulations and identify changes that may be  
2 necessary to address care delivery and cost-effective treatment for  
3 adults on ninety-day or one hundred eighty-day commitment orders. The  
4 health care authority must report its findings to the governor's  
5 office and the appropriate committees of the legislature by December  
6 15, 2019.

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

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

11 (a) A health maintenance organization or a combination of health  
12 maintenance organizations if (i) the organization or combination of  
13 organizations has, in the service area of the organization or the  
14 service areas of the organizations in the combination, an enrollment  
15 of at least fifty thousand individuals, (ii) the facility in which  
16 the service will be provided is or will be geographically located so  
17 that the service will be reasonably accessible to such enrolled  
18 individuals, and (iii) at least seventy-five percent of the patients  
19 who can reasonably be expected to receive the tertiary health service  
20 will be individuals enrolled with such organization or organizations  
21 in the combination;

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

34 (c) A health care facility (or portion thereof) if (i) the  
35 facility is or will be leased by a health maintenance organization or  
36 combination of health maintenance organizations which has, in the  
37 service area of the organization or the service areas of the  
38 organizations in the combination, an enrollment of at least fifty  
39 thousand individuals and, on the date the application is submitted

1 under subsection (2) of this section, at least fifteen years remain  
2 in the term of the lease, (ii) the facility is or will be  
3 geographically located so that the service will be reasonably  
4 accessible to such enrolled individuals, and (iii) at least seventy-  
5 five percent of the patients who can reasonably be expected to  
6 receive the tertiary health service will be individuals enrolled with  
7 such organization;

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

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

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

19 (b) The application contains such information respecting the  
20 organization, combination, or facility and the proposed offering or  
21 obligation by a nursing home as the department may require to  
22 determine if the organization or combination meets the requirements  
23 of subsection (1) of this section or the facility meets or will meet  
24 such requirements; and

25 (c) The department approves such application. The department  
26 shall approve or disapprove an application for exemption within  
27 thirty days of receipt of a completed application. In the case of a  
28 proposed health care facility (or portion thereof) which has not  
29 begun to provide tertiary health services on the date an application  
30 is submitted under this subsection with respect to such facility (or  
31 portion), the facility (or portion) shall meet the applicable  
32 requirements of subsection (1) of this section when the facility  
33 first provides such services. The department shall approve an  
34 application submitted under this subsection if it determines that the  
35 applicable requirements of subsection (1) of this section are met.

36 (3) A health care facility (or any part thereof) with respect to  
37 which an exemption was granted under subsection (1) of this section  
38 may not be sold or leased and a controlling interest in such facility  
39 or in a lease of such facility may not be acquired and a health care  
40 facility described in (1)(c) which was granted an exemption under

1 subsection (1) of this section may not be used by any person other  
2 than the lessee described in (1)(c) unless:

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

5 (b) The department determines, upon application, that (i) the  
6 entity to which the facility is proposed to be sold or leased, which  
7 intends to acquire the controlling interest, or which intends to use  
8 the facility is a health maintenance organization or a combination of  
9 health maintenance organizations which meets the requirements of  
10 (1)(a)(i), and (ii) with respect to such facility, meets the  
11 requirements of (1)(a)(ii) or (iii) or the requirements of (1)(b)(i)  
12 and (ii).

13 (4) In the case of a health maintenance organization, an  
14 ambulatory care facility, or a health care facility, which ambulatory  
15 or health care facility is controlled, directly or indirectly, by a  
16 health maintenance organization or a combination of health  
17 maintenance organizations, the department may under the program apply  
18 its certificate of need requirements to the offering of inpatient  
19 tertiary health services to the extent that such offering is not  
20 exempt under the provisions of this section or RCW 70.38.105(7).

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

25 (i) Offers services only to contractual members;

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

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

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

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

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

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

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

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

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

16 (c) The sale, lease, acquisition, or use of part or all of a  
17 continuing care retirement community nursing home that qualifies for  
18 exemption under this subsection shall require prior certificate of  
19 need approval to qualify for licensure as a nursing home unless the  
20 department determines such sale, lease, acquisition, or use is by a  
21 continuing care retirement community that meets the conditions of (a)  
22 of this subsection.

23 (6) A rural hospital, as defined by the department, reducing the  
24 number of licensed beds to become a rural primary care hospital under  
25 the provisions of Part A Title XVIII of the Social Security Act  
26 Section 1820, 42 U.S.C., 1395c et seq. may, within three years of the  
27 reduction of beds licensed under chapter 70.41 RCW, increase the  
28 number of licensed beds to no more than the previously licensed  
29 number without being subject to the provisions of this chapter.

30 (7) A rural health care facility licensed under RCW 70.175.100  
31 formerly licensed as a hospital under chapter 70.41 RCW may, within  
32 three years of the effective date of the rural health care facility  
33 license, apply to the department for a hospital license and not be  
34 subject to the requirements of RCW 70.38.105(4)(a) as the  
35 construction, development, or other establishment of a new hospital,  
36 provided there is no increase in the number of beds previously  
37 licensed under chapter 70.41 RCW and there is no redistribution in  
38 the number of beds used for acute care or long-term care, the rural  
39 health care facility has been in continuous operation, and the rural  
40 health care facility has not been purchased or leased.

1 (8) A rural hospital determined to no longer meet critical access  
2 hospital status for state law purposes as a result of participation  
3 in the Washington rural health access preservation pilot identified  
4 by the state office of rural health and formerly licensed as a  
5 hospital under chapter 70.41 RCW may apply to the department to renew  
6 its hospital license and not be subject to the requirements of RCW  
7 70.38.105(4) (a) as the construction, development, or other  
8 establishment of a new hospital, provided there is no increase in the  
9 number of beds previously licensed under chapter 70.41 RCW. If all or  
10 part of a formerly licensed rural hospital is sold, purchased, or  
11 leased during the period the rural hospital does not meet critical  
12 access hospital status as a result of participation in the Washington  
13 rural health access preservation pilot and the new owner or lessor  
14 applies to renew the rural hospital's license, then the sale,  
15 purchase, or lease of part or all of the rural hospital is subject to  
16 the provisions of this chapter.

17 (9) (a) A nursing home that voluntarily reduces the number of its  
18 licensed beds to provide assisted living, licensed assisted living  
19 facility care, adult day care, adult day health, respite care,  
20 hospice, outpatient therapy services, congregate meals, home health,  
21 or senior wellness clinic, or to reduce to one or two the number of  
22 beds per room or to otherwise enhance the quality of life for  
23 residents in the nursing home, may convert the original facility or  
24 portion of the facility back, and thereby increase the number of  
25 nursing home beds to no more than the previously licensed number of  
26 nursing home beds without obtaining a certificate of need under this  
27 chapter, provided the facility has been in continuous operation and  
28 has not been purchased or leased. Any conversion to the original  
29 licensed bed capacity, or to any portion thereof, shall comply with  
30 the same life and safety code requirements as existed at the time the  
31 nursing home voluntarily reduced its licensed beds; unless waivers  
32 from such requirements were issued, in which case the converted beds  
33 shall reflect the conditions or standards that then existed pursuant  
34 to the approved waivers.

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

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

1 (ii) Give notice to the department of health and to the  
2 department of social and health services of the intent to convert  
3 beds back. If construction is required for the conversion of beds  
4 back, the notice of intent to convert beds back must be given, at a  
5 minimum, one year prior to the effective date of license modification  
6 reflecting the restored beds; otherwise, the notice must be given a  
7 minimum of ninety days prior to the effective date of license  
8 modification reflecting the restored beds. Prior to any license  
9 modification to convert beds back to nursing home beds under this  
10 section, the licensee must demonstrate that the nursing home meets  
11 the certificate of need exemption requirements of this section.

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

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

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

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

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

32 (i) The hospice agency is designed to serve the unique religious  
33 or cultural needs of a religious group or an ethnic minority and  
34 commits to furnishing hospice services in a manner specifically aimed  
35 at meeting the unique religious or cultural needs of the religious  
36 group or ethnic minority;

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

38 (A) Operates a facility, or group of facilities, that offers a  
39 comprehensive continuum of long-term care services, including, at a  
40 minimum, a licensed, medicare-certified nursing home, assisted



1 living, independent living, day health, and various community-based  
2 support services, designed to meet the unique social, cultural, and  
3 religious needs of a specific cultural and ethnic minority group;

4 (B) Has operated the facility or group of facilities for at least  
5 ten continuous years prior to the establishment of the hospice  
6 agency;

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

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

11 (v) The hospice agency commits to obtaining and maintaining  
12 medicare certification;

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

16 (vii) The hospice agency is not sold or transferred to another  
17 agency.

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

21 (11) To alleviate the need to board psychiatric patients in  
22 emergency departments and increase capacity of hospitals to serve  
23 individuals on ninety-day or one hundred eighty-day commitment  
24 orders, for the period of time from May 5, 2017, through June 30,  
25 ((2019)) 2021:

26 (a) The department shall suspend the certificate of need  
27 requirement for a hospital licensed under chapter 70.41 RCW that  
28 changes the use of licensed beds to increase the number of beds to  
29 provide psychiatric services, including involuntary treatment  
30 services. A certificate of need exemption under this subsection  
31 (11) (a) shall be valid for two years.

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

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

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

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

3       (1) For a grant awarded during fiscal years (~~(2016)~~) 2018 and  
4 (~~(2017)~~) 2019 by the department of commerce under this section,  
5 hospitals licensed under chapter 70.41 RCW and psychiatric hospitals  
6 licensed as establishments under chapter 71.12 RCW are not subject to  
7 certificate of need requirements for the addition of the number of  
8 new psychiatric beds indicated in the grant. The department of  
9 commerce may not make a prior approval of a certificate of need  
10 application a condition for a grant application under this  
11 section. The period during which an approved hospital or psychiatric  
12 hospital project qualifies for a certificate of need exemption under  
13 this section is two years from the date of the grant award.

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

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

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

22       (ii) Commence the project within two years of the date of receipt  
23 of the notice of exemption.

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

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

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

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

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

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

14 (ii) Commence the project within two years of the date of receipt  
15 of the notice of exemption.

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

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

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

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

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

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

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

1        NEW SECTION.        **Sec. 10.**        By July 1, 2020, the health care  
2 authority and the department of social and health services, in  
3 consultation with the department of health, the department of  
4 children, youth, and families, representatives from providers serving  
5 children's inpatient psychiatric needs in each of the three largest  
6 cities in Washington, representatives from behavioral health and  
7 developmental disability service providers, and representatives from  
8 developmental disability advocacy organizations including individuals  
9 and families of individuals who need or receive behavioral health and  
10 developmental disability services, must provide recommendations to  
11 the governor's office and the appropriate committees of the  
12 legislature relating to short-term and long-term residential  
13 intensive behavioral health and developmental disability services for  
14 youth and adults with developmental disabilities and behavioral  
15 health needs who are experiencing, or are in danger of experiencing,  
16 barriers discharging from inpatient behavioral health treatment  
17 received in community hospitals or state hospitals. The  
18 recommendations must address the needs of youth and adults with  
19 developmental or intellectual disabilities separately and: (1)  
20 Consider services necessary to support the youth or adult, the youth  
21 or adult's family, and the residential service provider in  
22 preparation for and after discharge, including in-home behavioral  
23 health and developmental disability supports that may be needed after  
24 discharge to maintain stability; (2) establish staffing and funding  
25 requirements that provide an appropriate level of treatment for  
26 residents in facilities, including both licensed mental health  
27 professionals and developmental disability professionals; and (3) for  
28 youth clients, consider how to successfully transition a youth to  
29 adult services without service disruption.

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

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

35        (2) In expanding home and community services, the department  
36 shall take full advantage of federal funding available under Title  
37 XVIII and Title XIX of the federal social security act, including  
38 home health, adult day care, waiver options, and state plan services  
39 and expand the availability of in-home services and residential

1 services, including services in adult family homes, assisted living  
2 facilities, and enhanced services facilities.

3 (3) (a) The department shall by rule establish payment rates for  
4 home and community services that support the provision of cost-  
5 effective care. Beginning July 1, 2019, the department shall adopt a  
6 data-driven medicaid payment methodology as specified in RCW  
7 74.39A.032 for contracted assisted living, adult residential care,  
8 and enhanced adult residential care. In the event of any conflict  
9 between any such rule and a collective bargaining agreement entered  
10 into under RCW 74.39A.270 and 74.39A.300, the collective bargaining  
11 agreement prevails.

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

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

32 NEW SECTION. Sec. 12. (1) The health care authority shall  
33 establish a pilot program to provide mental health drop-in center  
34 services. The mental health drop-in center services shall provide a  
35 peer-focused recovery model during daytime hours through a community-  
36 based, therapeutic, less restrictive alternative to hospitalization  
37 for acute psychiatric needs. The program shall assist clients in need  
38 of voluntary, short-term, noncrisis services that focus on recovery  
39 and wellness. Clients may refer themselves, be brought to the center

1 by law enforcement, be brought to the center by family members, or be  
2 referred by an emergency department.

3 (2) The pilot program shall be conducted in the largest city in a  
4 regional service area that has at least nine counties. Funds to  
5 support the pilot program shall be distributed through the behavioral  
6 health administrative service organization that serves the pilot  
7 program.

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

10 (4) By December 1, 2020, the health care authority shall submit a  
11 preliminary report to the governor and the appropriate committees of  
12 the legislature. The preliminary report shall include a survey of  
13 peer mental health programs that are operating in the state,  
14 including the location, type of services offered, and number of  
15 clients served. By December 1, 2021, the health care authority shall  
16 report to the governor and the appropriate committees of the  
17 legislature on the results of the pilot program. The report shall  
18 include information about the number of clients served, the needs of  
19 the clients, the method of referral for the clients, and  
20 recommendations on how to expand the program statewide, including any  
21 recommendations to account for different needs in urban and rural  
22 areas.

23 NEW SECTION. **Sec. 13.** A new section is added to chapter 71A.12  
24 RCW to read as follows:

25 (1) Subject to the availability of amounts appropriated for this  
26 specific purpose, the developmental disabilities administration of  
27 the department of social and health services shall track and monitor  
28 the following items and make the deidentified information available  
29 to the office of the developmental disabilities ombuds created in RCW  
30 43.382.005, the legislature, the Washington state hospital  
31 association, and the public upon request:

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

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

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

1 (iii) Each client's length of hospital stay for nonmedical  
2 purposes;

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (a) "Hospital" means a facility licensed under chapter 70.41 or  
33 71.12 RCW.

34 (b) "Provider" means a certified residential services and support  
35 program that contracts with the developmental disabilities  
36 administration of the department of social and health services to  
37 provide services to administration clients. "Provider" also includes  
38 the state-operated living alternatives program operated by the  
39 administration."

**ADOPTED AND ENGROSSED 4/17/19**

1       On page 1, line 2 of the title, after "patients;" strike the  
2 remainder of the title and insert "amending RCW 71.24.025, 70.38.111,  
3 and 70.38.260; reenacting and amending RCW 74.39A.030; adding new  
4 sections to chapter 71.24 RCW; adding a new section to chapter 71A.12  
5 RCW; creating new sections; and providing an expiration date."

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