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**SUBSTITUTE HOUSE BILL 1394**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** House Health Care & Wellness (originally sponsored by Representatives Schmick, Cody, Jenkins, Kilduff, Davis, Griffey, Riccelli, Macri, Harris, Robinson, Goodman, Sullivan, Appleton, Bergquist, Thai, Tharinger, Slatter, Doglio, Pollet, Callan, Leavitt, and Ormsby; by request of Office of the Governor)

READ FIRST TIME 02/13/19.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (d) Exhibits suicidal preoccupation or attempts; or

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

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

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

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

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

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

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

11 (ii) Changes in custodial adult;

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

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

17 (v) Drug or alcohol abuse; or

18 (vi) Homelessness.

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

22 (a) The authority for:

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

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

26 (b) The department of health for:

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

29 (ii) Residential services.

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

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



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

3 (41) "Intensive behavioral health treatment facility" means a  
4 community-based residential treatment facility for behavioral health  
5 patients whose impairment or behaviors require care that cannot be  
6 met in other settings.

7 (42) "Mental health drop-in center" means a twenty-four hour  
8 peer-run program to serve individuals in need of voluntary, short-  
9 term, noncrisis services that will focus on recovery and wellness.

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

12 The secretary shall license or certify intensive behavioral  
13 health treatment facilities that meet state minimum standards. The  
14 secretary must establish rules working with the authority and the  
15 department of social and health services to create standards for  
16 licensure or certification of intensive behavioral health treatment  
17 facilities. The rules, at a minimum, must:

- 18 (1) Require twenty-four hour supervision of residents;
- 19 (2) Establish staffing requirements that provide an appropriate  
20 response to the acuity of the residents;
- 21 (3) Establish requirements for the ability to use limited egress;
- 22 (4) Limit services to persons at least eighteen years of age; and
- 23 (5) Establish resident rights that are substantially similar to  
24 the rights of residents in long-term care facilities.

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

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

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

36 The secretary shall license or certify mental health drop-in  
37 centers that meet state minimum standards. The secretary must

1 establish rules working with the authority and the department of  
2 social and health services to create standards for licensure or  
3 certification of mental health drop-in centers. The rules, at a  
4 minimum, must:

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

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

12 (3) Establish staffing requirements;

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

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

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

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

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

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

33 NEW SECTION. **Sec. 7.** By November 15, 2019, the health care  
34 authority shall confer with the department of health, hospitals  
35 licensed under chapters 70.41 and 71.12 RCW, and evaluation and  
36 treatment facilities licensed or certified under chapter 71.05 RCW to  
37 review laws and regulations and identify changes that may be  
38 necessary to address care delivery and cost-effective treatment for

1 adults on ninety-day or one hundred eighty-day commitment orders. The  
2 health care authority must report its findings to the governor's  
3 office and the appropriate committees of the legislature by December  
4 15, 2019.

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

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

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

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

32 (c) A health care facility (or portion thereof) if (i) the  
33 facility is or will be leased by a health maintenance organization or  
34 combination of health maintenance organizations which has, in the  
35 service area of the organization or the service areas of the  
36 organizations in the combination, an enrollment of at least fifty  
37 thousand individuals and, on the date the application is submitted  
38 under subsection (2) of this section, at least fifteen years remain  
39 in the term of the lease, (ii) the facility is or will be

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

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

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

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

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

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

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

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

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

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

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

23 (i) Offers services only to contractual members;

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

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

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

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

39 (vi) Does not operate, and has not undertaken a project that  
40 would result in a number of nursing home beds in excess of one for

1 every four living units operated by the continuing care retirement  
2 community, exclusive of nursing home beds; and

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

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

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

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

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

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

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

39 (8) A rural hospital determined to no longer meet critical access  
40 hospital status for state law purposes as a result of participation

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

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

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

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

38 (ii) Give notice to the department of health and to the  
39 department of social and health services of the intent to convert  
40 beds back. If construction is required for the conversion of beds

1 back, the notice of intent to convert beds back must be given, at a  
2 minimum, one year prior to the effective date of license modification  
3 reflecting the restored beds; otherwise, the notice must be given a  
4 minimum of ninety days prior to the effective date of license  
5 modification reflecting the restored beds. Prior to any license  
6 modification to convert beds back to nursing home beds under this  
7 section, the licensee must demonstrate that the nursing home meets  
8 the certificate of need exemption requirements of this section.

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

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

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

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

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

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

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

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



1 (B) Has operated the facility or group of facilities for at least  
2 ten continuous years prior to the establishment of the hospice  
3 agency;

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

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

8 (v) The hospice agency commits to obtaining and maintaining  
9 medicare certification;

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

13 (vii) The hospice agency is not sold or transferred to another  
14 agency.

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

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

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

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

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

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

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

1 (1) For a grant awarded during fiscal years ((2016)) 2018 and  
2 ((2017)) 2019 by the department of commerce under this section,  
3 hospitals licensed under chapter 70.41 RCW and psychiatric hospitals  
4 licensed as establishments under chapter 71.12 RCW are not subject to  
5 certificate of need requirements for the addition of the number of  
6 new psychiatric beds indicated in the grant. The department of  
7 commerce may not make a prior approval of a certificate of need  
8 application a condition for a grant application under this  
9 section. The period during which an approved hospital or psychiatric  
10 hospital project qualifies for a certificate of need exemption under  
11 this section is two years from the date of the grant award.

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

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

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

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

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

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

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

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

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

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

4 (ii) Commence the project within two years of the date of receipt  
5 of the notice of exemption.

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

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

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

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

24 (ii) Commence the project within two years of the date of receipt  
25 of the notice of exemption.

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

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

30 NEW SECTION. **Sec. 10.** By December 1, 2019, the secretary of  
31 health must, in consultation with the department of social and health  
32 services, department of children, youth, and families, and the health  
33 care authority, provide recommendations to the governor's office and  
34 the appropriate committees of the legislature on youth short-term  
35 residential intensive behavioral health and developmental  
36 disabilities services. The recommendations must establish staffing  
37 requirements that provide an appropriate level of treatment for  
38 residents and include both licensed mental health professionals and  
39 developmental disability professionals. The recommendations should

1 also consider developmental disability-related services necessary to  
2 support the youth and the youth's family in preparation for and after  
3 discharge.

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

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

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

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

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

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

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