

SIXTY SIXTH LEGISLATURE - REGULAR SESSION

SEVENTY EIGHTH DAY

House Chamber, Olympia, Monday, April 1, 2019

The House was called to order at 10:00 a.m. by the Speaker (Representative Orwall presiding). The Clerk called the roll and a quorum was present.

The flags were escorted to the rostrum by a Sergeant at Arms Color Guard, Pages Amber Abbott and Aiden Thien. The Speaker (Representative Orwall presiding) led the Chamber in the Pledge of Allegiance. The prayer was offered by Representative Paul Harris, 17th Legislative District, Washington.

Reading of the Journal of the previous day was dispensed with and it was ordered to stand approved.

The Speaker assumed the chair.

SIGNED BY THE SPEAKER

The Speaker signed the following bills:

HOUSE BILL NO. 1001
HOUSE BILL NO. 1011
HOUSE BILL NO. 1055
HOUSE BILL NO. 1247
HOUSE BILL NO. 2072

The Speaker called upon Representative Orwall to preside.

There being no objection, the House advanced to the fourth order of business.

INTRODUCTION & FIRST READING

HB 2163 by Representative Stokesbary

AN ACT Relating to transferring extraordinary revenue growth from the budget stabilization account for K-12 education; creating a new section; and declaring an emergency.

Referred to Committee on Appropriations.

HJM 4010 by Representatives Young, Shea, Walsh, McCaslin, Sutherland, Rude and Eslick

Requesting that Congress allow design defect claims against vaccine manufacturers by individuals who have experienced adverse side effects caused by vaccines.

Referred to Committee on Civil Rights & Judiciary.

There being no objection, the bill and memorial listed on the day's committee reports under the fourth order of business were referred to the committees so designated.

There being no objection, the House advanced to the fifth order of business.

REPORTS OF STANDING COMMITTEES

March 26, 2019

SSB 5023 Prime Sponsor, Committee on Early Learning & K-12 Education: Concerning ethnic studies materials and resources for public school students. Reported by Committee on Education

MAJORITY recommendation: Do pass as amended.

On page 1, line 10, after "to" insert "develop, and periodically update, essential academic learning requirements and grade-level expectations that identify the knowledge and skills that all public school students need to be global citizens in a global society with an appreciation for the contributions of diverse cultures. The office of the superintendent of public instruction must also"

On page 1, after line 15, insert the following:

"NEW SECTION. Sec. 2. A new section is added to chapter 28A.655 RCW to read as follows:

By September 1, 2020, the office of the superintendent of public instruction shall adopt essential academic learning requirements and grade-level expectations that identify the knowledge and skills that all public school students need to be global citizens in a global society with an appreciation for the contributions of diverse cultures. These essential academic learning requirements and grade-level expectations must be periodically updated to incorporate best practices in ethnic studies."

Renumber the remaining sections consecutively and correct any internal references accordingly.

On page 2, beginning on line 10, after "(1)" strike all material through "the" on line 12 and insert "The"

On page 2, beginning on line 13, after "committee" strike all material through "advise" on line 14 and insert "to:

(a) Advise"

On page 2, line 17, after "resources" strike "required" and insert ": (i) Described"

On page 2, beginning on line 17, after "act" strike all material through "develop" on line 18 and insert "; and (ii) for use in elementary schools; and

(b) Develop"

On page 2, at the beginning of line 21, strike "(d)" and insert "(2)"

On page 2, line 26, strike all material through "Indian"

On page 2, line 27, strike "(2)" and insert "(3)"

On page 2, after line 27, insert the following:

"NEW SECTION. Sec. 4. The legislature intends that nothing in this act supersedes the use of the since time immemorial: tribal sovereignty in Washington state curriculum, developed as required under RCW 28A.320.170(1)(b)."

Correct the title.

Signed by Representatives Santos, Chair; Dolan, Vice Chair; Paul, Vice Chair; Bergquist; Callan; Kilduff; Ortiz-Self; Rude; Stonier; Thai and Valdez.

MINORITY recommendation: Do not pass. Signed by Representatives Steele, Ranking Minority Member; McCaslin, Assistant Ranking Minority Member; Volz, Assistant Ranking Minority Member; Caldier; Kraft and Ybarra.

MINORITY recommendation: Without recommendation. Signed by Representative Corry.

Referred to Committee on Rules for second reading.

March 28, 2019

SB 5088 Prime Sponsor, Senator Wellman:
Awarding credits for computer science.
Reported by Committee on Education

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The legislature recognizes the benefit of computer science and computational thinking in education, not only with respect to educational development, but also in cultivating the skills needed to compete and excel in our state's career landscape. By providing more opportunities to take courses and earn credit in computer science, Washington can better prepare students to excel both in school and after graduation.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.230 RCW to read as follows:

(1) Beginning no later than the 2022-23 school year, each school district that operates a high school must, at a minimum, provide an opportunity to access an elective computer science course that is available to all high school students. School districts are encouraged to consider community-based or public-private partnerships in establishing and administering a course, but any course offered in accordance with this section must be aligned to the state learning standards for computer science or mathematics.

(2) In accordance with the requirements of this section, beginning in the 2019-20 school year, school districts may award academic credit for computer science to students based on student completion of a competency examination that is aligned with the state learning standards for computer science or mathematics and course equivalency requirements adopted by the office of the superintendent of public instruction to implement this section. Each school district board of directors in districts that award credit under this subsection shall develop a written policy for awarding such credit that includes:

(a) A course equivalency approval procedure;

(b) Procedures for awarding competency-based credit for skills learned partially or wholly outside of a course; and

(c) An approval process for computer science courses taken before attending high school under RCW 28A.230.090 (4) and (5).

(3) Prior to the use of any competency examination under this section that may be used to award academic credit to students, the office of the superintendent of public instruction must review the examination to ensure its alignment with:

(a) The state learning standards for computer science or mathematics; and

(b) Course equivalency requirements adopted by the office of the superintendent of public instruction to implement this section.

Sec. 3. RCW 28A.230.100 and 2012 c 229 s 504 are each amended to read as follows:

(1) The superintendent of public instruction, in consultation with the student achievement council, the state board for community and technical colleges, and the workforce training and education coordinating board, shall adopt rules pursuant to chapter 34.05 RCW, to implement the course requirements set forth in RCW 28A.230.090. The rules shall include, as the superintendent deems necessary, granting equivalencies for and temporary exemptions from the course requirements in RCW 28A.230.090 and special alterations of the course requirements in RCW 28A.230.090. In developing such rules the superintendent shall recognize the relevance of vocational and applied courses and allow such courses to fulfill in whole or in part the courses required

for graduation in RCW 28A.230.090, as determined by the high school or school district in accordance with RCW 28A.230.097.

(2) The rules ~~((may))~~ created under subsection (1) of this section must include provisions for:

(a) Competency testing in lieu of such courses required for graduation in RCW 28A.230.090 ~~((or))~~;

(b) Competency testing in lieu of electives, including computer science electives created under section 2 of this act, provided applicable state learning standards and equivalency requirements are met; and

(c) Demonstration of specific skill proficiency or understanding of concepts through work or experience."

Correct the title.

Signed by Representatives Santos, Chair; Dolan, Vice Chair; Paul, Vice Chair; Steele, Ranking Minority Member; McCaslin, Assistant Ranking Minority Member; Volz, Assistant Ranking Minority Member; Bergquist; Caldier; Callan; Corry; Harris; Kilduff; Kraft; Ortiz-Self; Rude; Stonier; Thai and Valdez.

Referred to Committee on Rules for second reading.

April 8, 2019

E2SSB 5091 Prime Sponsor, Committee on Ways & Means: Concerning state and federal special education funding. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Appropriations and without amendment by Committee on Education.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The legislature intends to provide the funding necessary to support a comprehensive and responsive education system that fully addresses the needs of students with disabilities eligible for special education. Under the current funding model, students with disabilities eligible for special education are funded as basic education students first, with additional funding provided through a statewide multiplier intended to meet the additional needs of each student as established in the student's individualized education program. Additionally, a safety net administered by the office of the superintendent of public instruction is available for school districts that demonstrate significant extra need beyond what they receive from the base funding formula.

The legislature notes that school districts across the state have identified the need for additional resources to create the educational environment necessary to give every student with an individualized education program the opportunity to succeed. It is the legislature's intent to

maintain the current funding structure for special education with necessary resources, and to collect data related to the numbers of students who fall into different cost categories of support. These additional data will inform whether an alternative system of funding may be necessary to better reflect current needs of our schools and our students. However, as these data are collected, the legislature also intends to provide immediate relief to school district special education programs by enhancing the supplemental funding school districts receive for every student in the program of special education and to provide easier access to the safety net when those base funds are not adequate.

Sec. 2. RCW 28A.150.392 and 2018 c 266 s 106 are each amended to read as follows:

(1)(a) To the extent necessary, funds shall be made available for safety net awards for districts with demonstrated needs for special education funding beyond the amounts provided through the special education funding formula under RCW 28A.150.390.

(b) If the federal safety net awards based on the federal eligibility threshold exceed the federal appropriation in any fiscal year, then the superintendent shall expend all available federal discretionary funds necessary to meet this need.

(2) Safety net funds shall be awarded by the state safety net oversight committee subject to the following conditions and limitations:

(a) The committee shall award additional funds for districts that can convincingly demonstrate that all legitimate expenditures for special education exceed all available revenues from state funding formulas.

(b) In the determination of need, the committee shall consider additional available revenues from federal sources.

(c) Differences in program costs attributable to district philosophy, service delivery choice, or accounting practices are not a legitimate basis for safety net awards.

(d) In the determination of need, the committee shall require that districts demonstrate that they are maximizing their eligibility for all state revenues related to services for students eligible for special education~~((eligible students))~~ and all federal revenues from federal impact aid, medicaid, and the individuals with disabilities education act-Part B and appropriate special projects. Awards associated with (e) and (f) of this subsection shall not exceed the total of a district's specific determination of need.

(e) The committee shall then consider the extraordinary high cost needs of one or more individual students eligible for and receiving special education ~~((students))~~. Differences in costs attributable to district philosophy, service delivery choice, or accounting practices are not a legitimate basis for safety net awards.

(f) Using criteria developed by the committee, the committee shall then consider extraordinary costs associated with communities that draw a larger number of families with children in need of special education services, which may

include consideration of proximity to group homes, military bases, and regional hospitals. Safety net awards under this subsection (2)(f) shall be adjusted to reflect amounts awarded under (e) of this subsection.

(g) The committee shall then consider the extraordinary high cost needs of one or more individual students eligible for and receiving special education ~~((students))~~ served in residential schools as defined in RCW 28A.190.020, programs for juveniles under the department of corrections, and programs for juveniles operated by city and county jails to the extent they are providing a secondary program of education ~~((for students enrolled in special education))~~.

(h) The maximum allowable indirect cost for calculating safety net eligibility may not exceed the federal restricted indirect cost rate for the district plus one percent.

(i) Safety net awards shall be adjusted based on the percent of potential medicaid eligible students billed as calculated by the superintendent of public instruction in accordance with chapter 318, Laws of 1999.

(j) Safety net awards must be adjusted for any audit findings or exceptions related to special education funding.

(3) The superintendent of public instruction shall adopt such rules and procedures as are necessary to administer the special education funding and safety net award process. By December 1, 2018, the superintendent shall review and revise the rules to achieve full and complete implementation of the requirements of this subsection and subsection (4) of this section including revisions to rules that provide additional flexibility to access community impact awards. Before revising any standards, procedures, or rules, the superintendent shall consult with the office of financial management and the fiscal committees of the legislature. In adopting and revising the rules, the superintendent shall ensure the application process to access safety net funding is streamlined, timelines for submission are not in conflict, feedback to school districts is timely and provides sufficient information to allow school districts to understand how to correct any deficiencies in a safety net application, and that there is consistency between awards approved by school district and by application period. The office of the superintendent of public instruction shall also provide technical assistance to school districts in preparing and submitting special education safety net applications.

(4) On an annual basis, the superintendent shall survey districts regarding their satisfaction with the safety net process and consider feedback from districts to improve the safety net process. Each year by December 1st, the superintendent shall prepare and submit a report to the office of financial management and the appropriate policy and fiscal committees of the legislature that summarizes the survey results and those changes made to the safety net process as a result of the school district feedback.

(5) The safety net oversight committee appointed by the superintendent of public instruction shall consist of:

(a) One staff member from the office of the superintendent of public instruction;

(b) Staff of the office of the state auditor who shall be nonvoting members of the committee; and

(c) One or more representatives from school districts or educational service districts knowledgeable of special education programs and funding.

(6) Beginning in the 2019-20 school year, a high-need student is eligible for safety net awards from state funding under subsection (2)(e) and (g) of this section if the student's individualized education program costs exceed two and two-tenths times the average per-pupil expenditure as defined in Title 20 U.S.C. Sec. 7801, the every student succeeds act of 2015.

Sec. 3. RCW 28A.150.415 and 2017 3rd sp.s. c 13 s 105 are each amended to read as follows:

(1) Beginning with the 2018-19 school year, the legislature shall begin phasing in funding for professional learning days for certificated instructional staff. At a minimum, the state must allocate funding for:

(a) One professional learning day in the 2018-19 school year;

(b) Two professional learning days in the 2019-20 school year; and

(c) Three professional learning days in the 2020-21 school year.

(2) The office of the superintendent of public instruction shall calculate each school district's professional learning allocation as provided in subsection (1) of this section separate from the minimum state allocation for salaries as specified in RCW 28A.150.410 and associated fringe benefits on the apportionment reports provided to each school district. The professional learning allocation shall be equal to the proportional increase resulting from adding the professional learning days provided in subsection (1) of this section to the required minimum number of school days in RCW 28A.150.220(5)(a) applied to the school district's minimum state allocation for salaries and associated fringe benefits for certificated instructional staff as specified in the omnibus operating appropriations act. Professional learning allocations shall be included in per-pupil calculations, such as special education, for programs funded on a per-pupil basis.

(3) Nothing in this section entitles an individual certificated instructional staff to any particular number of professional learning days.

~~((3))~~ (4) The professional learning days must meet the definitions and standards provided in RCW 28A.415.430, 28A.415.432, and 28A.415.434.

Sec. 4. RCW 28A.150.390 and 2018 c 266 s 102 are each amended to read as follows:

(1) The superintendent of public instruction shall submit to each regular session of the legislature during an odd-numbered year a programmed budget request for special

education programs for students with disabilities. Funding for programs operated by local school districts shall be on an excess cost basis from appropriations provided by the legislature for special education programs for students with disabilities and shall take account of state funds accruing through RCW 28A.150.260 (4)(a), (5), (6), and (8) and 28A.150.415.

(2) The excess cost allocation to school districts shall be based on the following:

(a) A district's annual average headcount enrollment of students ages birth through four and those five year olds not yet enrolled in kindergarten who are eligible for and ~~((enrolled in))~~ receiving special education, multiplied by the district's base allocation per full-time equivalent student, multiplied by 1.15; ~~((and))~~

(b) A district's annual average ~~((full-time equivalent basic education))~~ enrollment ~~((multiplied by the district's funded enrollment percent))~~ of resident students who are eligible for and enrolled in special education, multiplied by the district's base allocation per full-time equivalent student, multiplied by ~~((0.9609))~~ either the special education cost multiplier rate of:

(i) 1.00 for students eligible for and receiving special education and reported to be in the general education setting for eighty percent or more of the school day; or

(ii) 0.9823 for students eligible for and receiving special education and reported to be in the general education setting for less than eighty percent of the school day.

(3) As used in this section:

(a) "Base allocation" means the total state allocation to all schools in the district generated by the distribution formula under RCW 28A.150.260 (4)(a), (5), (6), and (8) and the allocation under RCW 28A.150.415, to be divided by the district's full-time equivalent enrollment.

(b) "Basic education enrollment" means enrollment of resident students including nonresident students enrolled under RCW 28A.225.225 and students from nonhigh districts enrolled under RCW 28A.225.210 and excluding students residing in another district enrolled as part of an interdistrict cooperative program under RCW 28A.225.250.

(c) "Enrollment percent" means the district's resident ~~((special education))~~ annual average enrollment of students who are eligible for and receiving special education, excluding students ages birth through four and those five year olds not yet enrolled in kindergarten and students enrolled in institutional education programs, as a percent of the district's annual average full-time equivalent basic education enrollment. If the enrollment percent exceeds thirteen and five-tenths percent, the excess cost allocation calculated under subsection (2) of this section must be adjusted by multiplying the allocation by thirteen and five-tenths percent divided by the enrollment percent.

~~((d))~~ "Funded enrollment percent" means the lesser of the district's actual enrollment percent or thirteen and five-tenths percent.

Sec. 5. RCW 43.09.2856 and 2018 c 266 s 406 are each amended to read as follows:

(1) Beginning with the 2019-20 school year, to ensure that school district local revenues are used solely for purposes of enriching the state's statutory program of basic education, the state auditor's regular financial audits of school districts must include a review of the expenditure of school district local revenues for compliance with RCW 28A.150.276, including the spending plan approved by the superintendent of public instruction under RCW 28A.505.240 and its implementation, and any supplemental contracts entered into under RCW 28A.400.200.

(2) If an audit under subsection (1) of this section results in findings that a school district has failed to comply with these requirements, then within ninety days of completing the audit the auditor must report the findings to the superintendent of public instruction, the office of financial management, and the education and operating budget committees of the legislature.

(3) The use of the state allocation provided for professional learning under RCW 28A.150.415 must be audited as part of the regular financial audits of school districts by the state auditor's office to ensure compliance with the limitations and conditions of RCW 28A.150.415.

(4)(a) The state auditor must conduct a financial or accountability audit of each school district by June 1, 2020, for the 2018-19 school year to include a review of the following:

(i) Special education revenues and the sources of those revenues, by school district; and

(ii) Special education expenditures and the object of those expenditures, by school district.

(b) Special education data reported for each school district through the audits under this subsection must be compiled and submitted to the education committees of the legislature by December 1, 2020.

NEW SECTION. Sec. 6. Section 5 of this act expires December 1, 2021."

Correct the title.

Signed by Representatives Ormsby, Chair; Stokesbary, Ranking Minority Member; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier; Chandler; Cody; Dolan; Dye; Fitzgibbon; Hansen; Hoff; Hudgins; Jinkins; Macri; Mosbrucker; Pettigrew; Pollet; Ryu; Schmick; Senn; Springer; Stanford; Steele; Sullivan; Sutherland; Tarleton; Tharinger and Ybarra.

MINORITY recommendation: Without recommendation. Signed by Representative Kraft.

Referred to Committee on Appropriations.

March 28, 2019

2SSB 5093 Prime Sponsor, Committee on Transportation: Enhancing litter control along state highways. Reported by Committee on Environment & Energy

MAJORITY recommendation: Do pass. Signed by Representatives Fitzgibbon, Chair; Lekanoff, Vice Chair; Shea, Ranking Minority Member; Dye, Assistant Ranking Minority Member; Boehnke; DeBolt; Doglio; Fey; Mead; Peterson and Shewmake.

Referred to Committee on Rules for second reading.

March 28, 2019

2SSB 5141 Prime Sponsor, Committee on Ways & Means: Concerning school resource officer mandatory training and policies. Reported by Committee on Education

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. It is not the intent of the legislature to require school resource officers to work in schools. If a school district chooses to have a school resource officer program, it is the intent of the legislature to create statewide consistency for the minimum training requirements that school resource officers must receive and ensure that there is a clear agreement between the school district and local law enforcement agency in order to help establish effective partnerships that protect the health and safety of all students.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.320 RCW to read as follows:

(1) If a school district chooses to have a school resource officer program, the school district must confirm that every school resource officer has received training on the following topics:

(a) Constitutional and civil rights of children in schools, including state law governing search and interrogation of youth in schools;

(b) Child and adolescent development;

(c) Trauma-informed approaches to working with youth;

(d) Recognizing and responding to youth mental health issues;

(e) Educational rights of students with disabilities, the relationship of disability to behavior, and best practices for interacting with students with disabilities;

(f) Collateral consequences of arrest, referral for prosecution, and court involvement;

(g) Resources available in the community that serve as alternatives to arrest and prosecution and pathways for youth to access services without court or criminal justice involvement;

(h) Local and national disparities in the use of force and arrests of children;

(i) De-escalation techniques when working with youth or groups of youth;

(j) State law regarding restraint and isolation in schools, including RCW 28A.600.485;

(k) Bias free policing and cultural competency, including best practices for interacting with students from particular backgrounds, including English learners, LGBTQ, and immigrants; and

(l) The federal family educational rights and privacy act (20 U.S.C. Sec. 1232g) requirements including limits on access to and dissemination of student records for noneducational purposes.

(2) School districts that have a school resource officer program must annually review and adopt an agreement with the local law enforcement agency using a process that involves parents, students, and community members. At a minimum, the agreement must incorporate the following elements:

(a) A clear statement that school resource officers may not be involved in student discipline or enforcing school rules and a clear description of the types of incidents that do not warrant school resource officer action;

(b) School district policy and procedure for teachers that clarify the circumstances under which teachers and school administrators may ask an officer to intervene with a student;

(c) Annual collection and reporting of data regarding calls for law enforcement service and the outcome of each call, including student arrest and referral for prosecution, disaggregated by school, offense type, race, gender, age, and students who have an individualized education program or plan developed under section 504 of the federal rehabilitation act of 1973;

(d) A process for families to file complaints with the school and local law enforcement agency related to school resource officers and a process for investigating and responding to complaints; and

(e) Confirmation that the school resource officers have received the training required under subsection (1) of this section.

(3)(a) School districts that choose to have a school resource officer program must comply with the requirements in subsection (2) of this section by the beginning of the 2020-21 school year.

(b)(i) School resource officers assigned to work in a school on or before July 28, 2019, must satisfy the training

requirements established in subsection (1) of this section by July 28, 2023.

(ii) School resource officers assigned to work in a school after July 28, 2019, must satisfy the training requirements established in subsection (1) of this section before working in a school.

(4) For the purposes of this section, "school resource officer" means a commissioned law enforcement officer in the state of Washington with sworn authority to make arrests, deployed in community-oriented policing, and assigned by the employing police department or sheriff's office to work in schools to address crime and disorder problems, gangs, and drug activities affecting or occurring in or around K-12 schools. School resource officers should focus on keeping students out of the criminal justice system when possible and should not be used to attempt to impose criminal sanctions in matters that are more appropriately handled within the educational system.

NEW SECTION. **Sec. 3.** A new section is added to chapter 28A.300 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the office of the superintendent of public instruction must establish and implement a grant program to fund training for school resource officers as described in section 2 of this act. Training under this section may be developed by schools in partnership with local law enforcement and organizations that have expertise in topics such as juvenile brain development; restorative practices or restorative justice; social-emotional learning; civil rights; and student rights, including free speech and search and seizure. This training may be provided by the criminal justice training commission.

(2) By December 1st of each year the program is funded, the office of the superintendent of public instruction must submit an annual report to the governor and appropriate committees of the legislature on the program."

Correct the title.

Signed by Representatives Santos, Chair; Dolan, Vice Chair; Paul, Vice Chair; Bergquist; Callan; Kilduff; Ortiz-Self; Stonier; Thai and Valdez.

MINORITY recommendation: Do not pass. Signed by Representatives Steele, Ranking Minority Member; McCaslin, Assistant Ranking Minority Member; Volz, Assistant Ranking Minority Member; Caldier; Corry and Kraft.

MINORITY recommendation: Without recommendation. Signed by Representatives Harris and Rude.

Referred to Committee on Appropriations.

March 27, 2019

SSB 5167

Prime Sponsor, Committee on Financial Institutions, Economic Development & Trade: Addressing the linked deposit program. Reported by Committee on Innovation, Technology & Economic Development

MAJORITY recommendation: Do pass. Signed by Representatives Hudgins, Chair; Kloba, Vice Chair; Smith, Ranking Minority Member; Boehnke, Assistant Ranking Minority Member; Morris; Slatter; Tarleton; Van Werven and Wylie.

Referred to Committee on Appropriations.

March 28, 2019

SB 5205

Prime Sponsor, Senator Dhingra: Concerning provisions governing firearms possession by persons who have been found incompetent to stand trial and who have a history of one or more violent acts. Reported by Committee on Civil Rights & Judiciary

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 10.77.088 and 2016 sp.s. c 29 s 411 are each amended to read as follows:

(1)(a) If the defendant is charged with a nonfelony crime which is a serious offense as identified in RCW 10.77.092 and found by the court to be not competent, then the court:

(i) Shall commit the defendant to the custody of the secretary who shall place such defendant in an appropriate facility of the department for evaluation and treatment;

(ii) May alternatively order the defendant to undergo evaluation and treatment at some other facility or provider as determined by the department, or under the guidance and control of a professional person. The facilities or providers may include community mental health providers or other local facilities that contract with the department and are willing and able to provide treatment under this section. During the 2015-2017 fiscal biennium, the department may contract with one or more cities or counties to provide competency restoration services in a city or county jail if the city or county jail is willing and able to serve as a location for competency restoration services and if the secretary determines that there is an emergent need for beds and documents the justification, including a plan to address the emergency. Patients receiving competency restoration services in a city or county jail must be physically separated from other populations at the jail and restoration treatment services must be provided as much as possible within a therapeutic environment. The placement under (a)(i) and (ii) of this subsection shall not exceed fourteen days in addition

to any unused time of the evaluation under RCW 10.77.060. The court shall compute this total period and include its computation in the order. The fourteen-day period plus any unused time of the evaluation under RCW 10.77.060 shall be considered to include only the time the defendant is actually at the facility and shall be in addition to reasonable time for transport to or from the facility;

(iii) May alternatively order that the defendant be placed on conditional release for up to ninety days for mental health treatment and restoration of competency; or

(iv) May order any combination of this subsection.

(b) If the court has determined or the parties agree that the defendant is unlikely to regain competency, the court may dismiss the charges without prejudice without ordering the defendant to undergo restoration treatment, in which case the court shall order that the defendant be referred for evaluation for civil commitment in the manner provided in (c) of this subsection.

(c)(i) If the proceedings are dismissed under RCW 10.77.084 and the defendant was on conditional release at the time of dismissal, the court shall order the designated crisis responder within that county to evaluate the defendant pursuant to chapter 71.05 RCW. The evaluation may be conducted in any location chosen by the professional.

(ii) If the defendant was in custody and not on conditional release at the time of dismissal, the defendant shall be detained and sent to an evaluation and treatment facility for up to seventy-two hours, excluding Saturdays, Sundays, and holidays, for evaluation for purposes of filing a petition under chapter 71.05 RCW. The seventy-two hour period shall commence upon the next nonholiday weekday following the court order and shall run to the end of the last nonholiday weekday within the seventy-two-hour period.

(2) If the defendant is charged with a nonfelony crime that is not a serious offense as defined in RCW 10.77.092(+) and found by the court to be not competent, the court may stay or dismiss proceedings and detain the defendant for sufficient time to allow the designated crisis responder to evaluate the defendant and consider initial detention proceedings under chapter 71.05 RCW. The court must give notice to all parties at least twenty-four hours before the dismissal of any proceeding under this subsection, and provide an opportunity for a hearing on whether to dismiss the proceedings.

(3) If at any time the court dismisses charges under subsection (1) or (2) of this section, the court shall make a finding as to whether the defendant has a history of one or more violent acts. If the court so finds, the defendant is barred from the possession of firearms until a court restores his or her right to possess a firearm under RCW 9.41.047. The court shall state to the defendant and provide written notice that the defendant is barred from the possession of firearms and that the prohibition remains in effect until a court restores his or her right to possess a firearm under RCW 9.41.047.

Sec. 2. RCW 9.41.040 and 2018 c 234 s 1 are each amended to read as follows:

(1)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns, has in his or her possession, or has in his or her control any firearm after having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any serious offense as defined in this chapter.

(b) Unlawful possession of a firearm in the first degree is a class B felony punishable according to chapter 9A.20 RCW.

(2)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the second degree, if the person does not qualify under subsection (1) of this section for the crime of unlawful possession of a firearm in the first degree and the person owns, has in his or her possession, or has in his or her control any firearm:

(i) After having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any felony not specifically listed as prohibiting firearm possession under subsection (1) of this section, or any of the following crimes when committed by one family or household member against another, committed on or after July 1, 1993: Assault in the fourth degree, coercion, stalking, reckless endangerment, criminal trespass in the first degree, or violation of the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence (RCW 26.50.060, 26.50.070, 26.50.130, or 10.99.040);

(ii) After having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of harassment when committed by one family or household member against another, committed on or after June 7, 2018;

(iii) During any period of time that the person is subject to a court order issued under chapter 7.90, 7.92, 9A.46, 10.14, 10.99, 26.09, 26.10, (~~26.26~~) 26.26B, or 26.50 RCW that:

(A) Was issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate;

(B) Restrains the person from harassing, stalking, or threatening an intimate partner of the person or child of the intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(I) Includes a finding that the person represents a credible threat to the physical safety of the intimate partner or child; and

(II) By its terms, explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury;

(iv) After having previously been involuntarily committed for mental health treatment under RCW

71.05.240, 71.05.320, 71.34.740, 71.34.750, chapter 10.77 RCW, or equivalent statutes of another jurisdiction, unless his or her right to possess a firearm has been restored as provided in RCW 9.41.047;

(v) After dismissal of criminal charges based on incompetency to stand trial under RCW 10.77.088 when the court has made a finding indicating that the defendant has a history of one or more violent acts, unless his or her right to possess a firearm has been restored as provided in RCW 9.41.047;

(vi) If the person is under eighteen years of age, except as provided in RCW 9.41.042; and/or

~~((v+))~~ (vii) If the person is free on bond or personal recognizance pending trial, appeal, or sentencing for a serious offense as defined in RCW 9.41.010.

(b) (a)(iii) of this subsection does not apply to a sexual assault protection order under chapter 7.90 RCW if the order has been modified pursuant to RCW 7.90.170 to remove any restrictions on firearm purchase, transfer, or possession.

(c) Unlawful possession of a firearm in the second degree is a class C felony punishable according to chapter 9A.20 RCW.

(3) Notwithstanding RCW 9.41.047 or any other provisions of law, as used in this chapter, a person has been "convicted", whether in an adult court or adjudicated in a juvenile court, at such time as a plea of guilty has been accepted, or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including but not limited to sentencing or disposition, post-trial or post-fact-finding motions, and appeals. Conviction includes a dismissal entered after a period of probation, suspension or deferral of sentence, and also includes equivalent dispositions by courts in jurisdictions other than Washington state. A person shall not be precluded from possession of a firearm if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or the conviction or disposition has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. Where no record of the court's disposition of the charges can be found, there shall be a rebuttable presumption that the person was not convicted of the charge.

(4)(a) Notwithstanding subsection (1) or (2) of this section, a person convicted or found not guilty by reason of insanity of an offense prohibiting the possession of a firearm under this section other than murder, manslaughter, robbery, rape, indecent liberties, arson, assault, kidnapping, extortion, burglary, or violations with respect to controlled substances under RCW 69.50.401 and 69.50.410, who received a probationary sentence under RCW 9.95.200, and who received a dismissal of the charge under RCW 9.95.240, shall not be precluded from possession of a firearm as a result of the conviction or finding of not guilty by reason of insanity. Notwithstanding any other provisions of this section, if a person is prohibited from possession of a firearm under subsection (1) or (2) of this section and has not

previously been convicted or found not guilty by reason of insanity of a sex offense prohibiting firearm ownership under subsection (1) or (2) of this section and/or any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, the individual may petition a court of record to have his or her right to possess a firearm restored:

(i) Under RCW 9.41.047; and/or

(ii)(A) If the conviction or finding of not guilty by reason of insanity was for a felony offense, after five or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525; or

(B) If the conviction or finding of not guilty by reason of insanity was for a nonfelony offense, after three or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525 and the individual has completed all conditions of the sentence.

(b) An individual may petition a court of record to have his or her right to possess a firearm restored under (a) of this subsection (4) only at:

(i) The court of record that ordered the petitioner's prohibition on possession of a firearm; or

(ii) The superior court in the county in which the petitioner resides.

(5) In addition to any other penalty provided for by law, if a person under the age of eighteen years is found by a court to have possessed a firearm in a vehicle in violation of subsection (1) or (2) of this section or to have committed an offense while armed with a firearm during which offense a motor vehicle served an integral function, the court shall notify the department of licensing within twenty-four hours and the person's privilege to drive shall be revoked under RCW 46.20.265, unless the offense is the juvenile's first offense in violation of this section and has not committed an offense while armed with a firearm, an unlawful possession of a firearm offense, or an offense in violation of chapter 66.44, 69.52, 69.41, or 69.50 RCW.

(6) Nothing in chapter 129, Laws of 1995 shall ever be construed or interpreted as preventing an offender from being charged and subsequently convicted for the separate felony crimes of theft of a firearm or possession of a stolen firearm, or both, in addition to being charged and subsequently convicted under this section for unlawful possession of a firearm in the first or second degree. Notwithstanding any other law, if the offender is convicted under this section for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both, then the

offender shall serve consecutive sentences for each of the felony crimes of conviction listed in this subsection.

(7) Each firearm unlawfully possessed under this section shall be a separate offense.

(8) For purposes of this section, "intimate partner" includes: A spouse, a domestic partner, a former spouse, a former domestic partner, a person with whom the restrained person has a child in common, or a person with whom the restrained person has cohabitated or is cohabitating as part of a dating relationship.

Sec. 3. RCW 9.41.047 and 2018 c 201 s 6001 are each amended to read as follows:

(1)(a) At the time a person is convicted or found not guilty by reason of insanity of an offense making the person ineligible to possess a firearm, or at the time a person is committed by court order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter 10.77 RCW for mental health treatment, or at the time that charges are dismissed based on incompetency to stand trial under RCW 10.77.088 and the court makes a finding that the person has a history of one or more violent acts, the convicting or committing court, or court that dismisses charges, shall notify the person, orally and in writing, that the person must immediately surrender any concealed pistol license and that the person may not possess a firearm unless his or her right to do so is restored by a court of record. For purposes of this section a convicting court includes a court in which a person has been found not guilty by reason of insanity.

(b) The (~~(convicting or committing)~~) court shall forward within three judicial days after conviction (~~(or)~~), entry of the commitment order, or dismissal of charges, a copy of the person's driver's license or identicard, or comparable information, along with the date of conviction or commitment, or date charges are dismissed, to the department of licensing. When a person is committed by court order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter 10.77 RCW, for mental health treatment, or when a person's charges are dismissed based on incompetency to stand trial under RCW 10.77.088 and the court makes a finding that the person has a history of one or more violent acts, the (~~(committing)~~) court also shall forward, within three judicial days after entry of the commitment order, or dismissal of charges, a copy of the person's driver's license, or comparable information, along with the date of commitment or date charges are dismissed, to the national instant criminal background check system index, denied persons file, created by the federal Brady handgun violence prevention act (P.L. 103-159). The petitioning party shall provide the court with the information required. If more than one commitment order is entered under one cause number, only one notification to the department of licensing and the national instant criminal background check system is required.

(2) Upon receipt of the information provided for by subsection (1) of this section, the department of licensing shall determine if the convicted or committed person, or the person whose charges are dismissed based on incompetency

to stand trial, has a concealed pistol license. If the person does have a concealed pistol license, the department of licensing shall immediately notify the license-issuing authority which, upon receipt of such notification, shall immediately revoke the license.

(3)(a) A person who is prohibited from possessing a firearm, by reason of having been involuntarily committed for mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, chapter 10.77 RCW, or equivalent statutes of another jurisdiction, or because the person's charges were dismissed based on incompetency to stand trial under RCW 10.77.088 and the court made a finding that the person has a history of one or more violent acts, may, upon discharge, petition the superior court to have his or her right to possess a firearm restored.

(b) The petition must be brought in the superior court that ordered the involuntary commitment or dismissed the charges based on incompetency to stand trial or the superior court of the county in which the petitioner resides.

(c) Except as provided in (d) of this subsection, the court shall restore the petitioner's right to possess a firearm if the petitioner proves by a preponderance of the evidence that:

(i) The petitioner is no longer required to participate in court-ordered inpatient or outpatient treatment;

(ii) The petitioner has successfully managed the condition related to the commitment or incompetency;

(iii) The petitioner no longer presents a substantial danger to himself or herself, or the public; and

(iv) The symptoms related to the commitment or incompetency are not reasonably likely to recur.

(d) If a preponderance of the evidence in the record supports a finding that the person petitioning the court has engaged in violence and that it is more likely than not that the person will engage in violence after his or her right to possess a firearm is restored, the person shall bear the burden of proving by clear, cogent, and convincing evidence that he or she does not present a substantial danger to the safety of others.

(e) When a person's right to possess a firearm has been restored under this subsection, the court shall forward, within three judicial days after entry of the restoration order, notification that the person's right to possess a firearm has been restored to the department of licensing, the health care authority, and the national instant criminal background check system index, denied persons file.

(4) No person who has been found not guilty by reason of insanity may petition a court for restoration of the right to possess a firearm unless the person meets the requirements for the restoration of the right to possess a firearm under RCW 9.41.040(4)."

Correct the title.

Signed by Representatives Jinkins, Chair; Thai, Vice Chair; Goodman; Hansen; Kilduff; Kirby; Orwall; Valdez and Walen.

MINORITY recommendation: Without recommendation. Signed by Representative Irwin, Ranking Minority Member.

MINORITY recommendation: Do not pass. Signed by Representatives Klippert and Shea.

Referred to Committee on Rules for second reading.

March 27, 2019

ESB 5210 Prime Sponsor, Senator Palumbo: Notifying purchasers of hearing instruments about uses and benefits of telecoil and bluetooth technology. Reported by Committee on Health Care & Wellness

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The legislature finds that approximately twenty percent of the population have hearing loss, including more than six hundred fifty thousand Washington state residents who have been diagnosed with hearing loss. The number is rising; the aging baby boomer generation is increasing age-related hearing loss exponentially, and hearing loss has increased among children and youth in the last decade. As these trends continue, telecoil technology has the potential to benefit more people, but only if consumers are made aware of the technology and its benefits.

The legislature finds that the federal Americans with disabilities act of 1990 was amended in 2010 to require assistive listening systems in places of public assembly, served by a public address system, to be hearing aid compatible. Currently, the telecoil is the only component within a consumer hearing instrument that enables this mandated compatibility. Without a telecoil-enabled hearing instrument a person cannot effectively access mandated assistive listening systems.

The legislature finds that bluetooth technology is evolving, but it is still generally not suited for long range transmission in a large venue like an auditorium. To date, hearing aid bluetooth technology does not meet compliance standards for assistive listening system requirements.

Therefore, the legislature intends to increase consumer awareness of benefits and uses of the different types of hearing instruments and technologies.

NEW SECTION. Sec. 2. A new section is added to chapter 18.35 RCW to read as follows:

(1) Any person who engages in fitting and dispensing of hearing instruments shall:

(a) Prior to initial fitting and purchase, notify a person seeking to purchase a hearing instrument, both orally and in writing, about the uses, benefits, and limitations of current hearing assistive technologies, as defined by the department of health in rule.

(b) Provide to each person who enters into an agreement to purchase a hearing instrument a receipt, which must be signed by the purchaser at the time of the purchase, containing language that verifies that prior to initial fitting and purchase the consumer was informed, both orally and in writing, about the uses, benefits, and limitations of current hearing assistive technologies, as defined by the department of health in rule.

(2) The department may adopt rules to create a standard receipt form that persons required to provide notice under this section may provide to purchasers, as required in subsection (1)(a) of this section.

(3) A person required to provide written notice in subsection (1) of this section may produce written materials, use materials produced by hearing instrument manufacturers or others, or use the materials created by the office of the deaf and hard of hearing, as required in section 3 of this act.

(4) This section may not be construed to create a private right of action or claim against any person engaging in the fitting and dispensing of hearing instruments.

(5) The department must adopt rules necessary to implement this section. The department may consider a number of factors in defining current hearing assistive technologies, but must consider whether hearing assistive technologies are compatible with assistive listening systems that are compliant with the Americans with disabilities act.

NEW SECTION. Sec. 3. A new section is added to chapter 43.20A RCW to read as follows:

The office of the deaf and hard of hearing shall develop educational materials to be distributed by hearing aid dispensers, including audiologists, to persons with hearing loss that explains the uses, benefits, and limitations of current hearing assistive technologies as defined by the department of health in rule."

Correct the title.

Signed by Representatives Cody, Chair; Macri, Vice Chair; Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Chambers; Davis; DeBolt; Harris; Jinkins; Riccelli; Robinson; Stonier; Thai and Tharinger.

Referred to Committee on Rules for second reading.

March 26, 2019

E2SSB 5223 Prime Sponsor, Committee on Ways & Means: Concerning net metering.

Reported by Committee on Environment & Energy

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 80.60.010 and 2007 c 323 s 1 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Commission" means the utilities and transportation commission.

(2) "Customer-generator" means a user of a net metering system.

(3) "Electrical company" means a company owned by investors that meets the definition of RCW 80.04.010.

(4) "Electric cooperative" means a cooperative or association organized under chapter 23.86 or 24.06 RCW.

(5) "Electric utility" means any electrical company, public utility district, irrigation district, port district, electric cooperative, or municipal electric utility that is engaged in the business of distributing electricity to retail electric customers in the state.

(6) "Irrigation district" means an irrigation district under chapter 87.03 RCW.

(7) "Meter aggregation" means the administrative combination of ~~((readings from and))~~ billing ~~((for all meters, regardless of the rate class, on premises owned or leased by a customer-generator located within the service territory of a single electric utility))~~ net energy consumption from a designated net meter and eligible aggregated meter.

(8) "Municipal electric utility" means a city or town that owns or operates an electric utility authorized by chapter 35.92 RCW.

(9) "Net metering" means measuring the difference between the electricity supplied by an electric utility and the excess electricity generated by a customer-generator's net metering system over the applicable billing period.

(10) "Net metering system" means a fuel cell, a facility that produces electricity and used and useful thermal energy from a common fuel source, or a facility for the production of electrical energy that generates renewable energy, and that:

(a) Has an electrical generating nameplate capacity of not more than one hundred kilowatts;

(b) Is located on the customer-generator's premises;

(c) Operates in parallel with the electric utility's transmission and distribution facilities and is connected to the electric utility's distribution system; and

(d) Is intended primarily to offset part or all of the customer-generator's requirements for electricity.

(11) "Premises" means any residential property, commercial real estate, or lands, owned or leased by a customer-generator within the service area of a single electric utility.

(12) "Port district" means a port district within which an industrial development district has been established as authorized by Title 53 RCW.

(13) "Public utility district" means a district authorized by chapter 54.04 RCW.

(14) "Renewable energy" means energy generated by a facility that uses water, wind, solar energy, or biogas ~~((from animal waste))~~ as a fuel.

(15) "Aggregated meter" means an electric service meter measuring electric energy consumption that is eligible to receive credits under a meter aggregation arrangement as described in RCW 80.60.030.

(16) "Consumer-owned utility" means a municipal electric utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, or a mutual corporation or association formed under chapter 24.06 RCW, that is engaged in the business of distributing electricity to more than one retail electric customer in the state.

(17) "Designated meter" means an electric service meter at the service of a net metering system that is interconnected to the utility distribution system.

(18) "Retail electric customer" includes an individual, organization, group, association, partnership, corporation, agency, unit of state government, or entity that is connected to the electric utility's distribution system and purchases electricity for ultimate consumption and not for resale.

Sec. 2. RCW 80.60.020 and 2007 c 323 s 2 are each amended to read as follows:

(1) An electric utility:

(a) Shall offer to make net metering, pursuant to RCW 80.60.030, available to eligible ~~((customers-generators))~~ customer-generators on a first-come, first-served basis until the ~~((cumulative generating capacity of net metering systems equals 0.25 percent of the utility's peak demand during 1996. On January 1, 2014, the cumulative generating capacity available to net metering systems will equal 0.5 percent of the utility's peak demand during 1996))~~ earlier of either: (i) June 30, 2029; or (ii) the first date upon which the cumulative generating capacity of net metering systems equals four percent of the utility's peak demand during 1996. Not less than one-half of the utility's 1996 peak demand available for net metering systems shall be reserved for the cumulative generating capacity attributable to net metering systems that generate renewable energy;

(b) Shall allow net metering systems to be interconnected using a standard kilowatt-hour meter capable of registering the flow of electricity in two directions, unless the commission, in the case of an electrical company, or the appropriate governing body, in the case of other electric utilities, determines, after appropriate notice and opportunity for comment:

(i) That the use of additional metering equipment to monitor the flow of electricity in each direction is necessary and appropriate for the interconnection of net metering systems, after taking into account the benefits and costs of purchasing and installing additional metering equipment; and

(ii) How the cost of purchasing and installing an additional meter is to be allocated between the customer-generator and the utility;

(c) Shall charge the customer-generator a minimum monthly fee that is the same as other customers of the electric utility in the same rate class, but shall not charge the customer-generator any additional standby, capacity, interconnection, or other fee or charge unless the commission, in the case of an electrical company, or the appropriate governing body, in the case of other electric utilities, determines, after appropriate notice and opportunity for comment that:

(i) The electric utility will incur direct costs associated with interconnecting or administering net metering systems that exceed any offsetting benefits associated with these systems; and

(ii) Public policy is best served by imposing these costs on the customer-generator rather than allocating these costs among the utility's entire customer base.

(2) If a production meter and software is required by the electric utility to provide meter aggregation under RCW 80.60.030(4), the customer-generator is responsible for the purchase of the production meter and software.

(3)(a)(i) A consumer-owned utility may develop a standard rate or tariff schedule that deviates from RCW 80.60.030 for eligible customer-generators to take effect at the earlier of either: (A) June 30, 2029; or (B) the first date upon which the cumulative generating capacity of net metering systems equals four percent of the utility's peak demand during 1996.

(ii) An electrical company may submit a filing with the commission to develop a standard tariff schedule that deviates from RCW 80.60.030 for eligible customer-generators. The commission must approve, reject, or approve with conditions a net metering tariff schedule pursuant to this subsection within one year of an electrical company filing. If the commission approves the filing with conditions, the investor-owned utility may choose to accept the tariff schedule with conditions or file a new tariff schedule with the commission.

(b) An approved standard rate or tariff schedule under this subsection applies to any customer-generator subject to an interconnection agreement entered into: (i) After June 30, 2029, or (ii) the first date upon which the

cumulative generating capacity of net metering systems pursuant to RCW 80.60.030 equals four percent of the utility's peak demand during 1996, whichever is earlier, unless the commission or governing body determines that a customer-generator is eligible for net metering under a rate or tariff schedule pursuant to RCW 80.60.030.

(c)(i) A consumer-owned utility must notify the Washington State University extension energy program sixty days in advance of when a standard rate for an eligible customer-generator is first placed on the agenda of the governing body.

(ii) Each electric utility must give notice by July 31, 2020, and semiannually thereafter, to the Washington State University extension energy program of the status of meeting the cumulative generating capacity available to net metering systems pursuant to subsection (1)(a) of this section.

(iii) The Washington State University extension energy program must make available on its web site a list of the following:

(A) Each electric utility's progress on reaching the cumulative generating capacity available to net metering systems pursuant to subsection (1)(a) of this section;

(B) Electric utilities that have provided notice of a rate or tariff schedule under this subsection; and

(C) Electric utilities that have adopted a standard rate or tariff schedule under this subsection.

(d) If the commission does not approve an electrical company's tariff schedule under (a)(ii) of this subsection, the commission may determine the alternative cumulative generating capacity available to net metering systems pursuant to RCW 80.60.030.

(4)(a) An electric utility must continue to credit a customer-generator pursuant to RCW 80.60.030 if:

(i) The customer-generator takes service under net metering prior to the earlier of: (A) June 30, 2029; or (B) the first date upon which the cumulative generating capacity of net metering systems reaches four percent of the utility's peak demand in 1996; and

(ii) The customer-generator's existing interconnection agreement for the net metering system remains valid.

(b) The commission, in the case of electrical companies, and a governing body, in the case of consumer-owned utilities, must determine as part of a standard rate or tariff schedule under this subsection when customer-generators become ineligible for credit pursuant to RCW 80.60.030.

(c) Upon adoption of a standard rate or tariff schedule by the commission or governing body pursuant to subsection (3)(a) of this section, the electric utility is exempt from requirements under subsection (1)(c) of this section and RCW 80.60.030 for new interconnection agreements.

Sec. 3. RCW 80.60.030 and 2007 c 323 s 3 are each amended to read as follows:

Consistent with the other provisions of this chapter, the net energy measurement, billed charges for kilowatt-hour consumption, and credits for excess kilowatt-hour generation by a net metered system, must be calculated in the following manner:

(1) The electric utility shall measure the net electricity produced or consumed during the billing period, in accordance with normal metering practices.

(2) If the electricity supplied by the electric utility exceeds the electricity generated by the customer-generator's net metering system and fed back to the electric utility during the billing period, the customer-generator shall be billed for the net electricity supplied by the electric utility, in accordance with normal metering practices.

(3) If excess electricity generated by the ~~((customer-generator))~~ net metering system during a billing period exceeds the electricity supplied by the electric utility during the same billing period, the customer-generator:

(a) Shall be billed for the appropriate customer charges for that billing period, in accordance with RCW 80.60.020; and

(b) Shall be credited for the excess kilowatt-hours generated during the billing period, with ~~((this kilowatt-hour credit))~~ the credit for kilowatt-hours appearing on the bill for the following billing period.

(4) If a customer-generator requests, an electric utility shall provide such a customer-generator meter aggregation.

(a) For a customer-generator~~((s))~~ participating in meter aggregation, credits for kilowatt-hours ~~((credits))~~ earned by ~~((a))~~ the customer-generator's net metering system during the billing period first shall be used to offset electricity supplied by the electric utility at the location of the customer-generator's designated meter.

(b) ~~((Not more than a total of one hundred kilowatts shall be aggregated among all customer generators participating in a generating facility under this subsection.~~

~~((e))~~ A customer-generator may aggregate a designated meter with one additional aggregated meter located on the same parcel as the designated meter or a parcel that is contiguous with the parcel where the designated meter is located.

(c) For the purposes of (b) of this subsection, a parcel is considered contiguous if they share a common property boundary, but may be separated only by a road or rail corridor.

(d) A retail electric customer who is a customer-generator and receives retail electric service from an electric utility at an aggregated meter must be the same retail electric customer who receives retail electric service from such an electric utility at the designated meter that is located on the premises where such a customer-generator's net metering system is located.

(e) Credits for excess kilowatt-hours ~~((credits))~~ earned by the net metering system~~((s))~~ at the site of a designated meter during ~~((the same))~~ a billing period~~((s))~~ shall be credited ~~((equally))~~ by the electric utility ~~((to remaining meters located on all premises of a customer-generator))~~ for kilowatt hour charges due at the aggregated meter at the ~~((designated))~~ applicable rate of ~~((each))~~ the aggregated meter.

~~((d))~~ (f) If credits generated in any billing period exceed total consumption for that billing period at both meters that are part of an aggregated arrangement, credits are retained pursuant to subsections (3) and (5) of this section.

(g) Credits carried over from one billing period to the next pursuant to (f) of this subsection must be applied in subsequent billing periods in the same manner described under (a) and (e) of this subsection.

(h) Meters so aggregated shall not change rate classes due to meter aggregation under this section.

(5) On ~~((April 30th))~~ March 31st of each calendar year or the billing period that contains March 31st of each year, any remaining unused ~~((kilowatt-hour credit))~~ credits for kilowatt-hours accumulated during the previous year shall be granted to the electric utility, without any compensation to the customer-generator.

(6) Nothing in this section prohibits a utility from allowing aggregation under terms different than the requirements of subsection (4) of this section if a customer-generator has an existing arrangement for meter aggregation in effect or a customer submits a written request for aggregation on or before July 1, 2019.

(7) Nothing in this section prohibits the owner of multifamily residential facility from installing a net metering system as defined in RCW 80.60.010 assigned to a single designated meter located on the premises of the multifamily residential facility where the tenants are not individually metered customers of the utility and distributing any benefits of the net metering to tenants of the facility where the net metering system is located. The utility must measure the net energy produced and provide credit to the single designated meter to which the net metering system is assigned in accordance with subsections (1) through (3) of this section or under the terms of a standard rate or tariff schedule established under RCW 80.60.020(3). The distribution of benefits to tenants of such a system, if any, is the responsibility of the owner of the net metering system and not the responsibility of the utility.

Sec. 4. RCW 80.60.040 and 2006 c 201 s 4 are each amended to read as follows:

(1) A net metering system used by a customer-generator shall include, at the customer-generator's own expense, all equipment necessary to meet applicable safety, power quality, and interconnection requirements established by the national electrical code, national electrical safety code, the institute of electrical and electronics engineers, and underwriters laboratories.

(2) The commission, in the case of an electrical company, or the appropriate governing body, in the case of other electric utilities, after appropriate notice and opportunity for comment, may adopt by regulation additional safety, power quality, and interconnection requirements for customer-generators, including limitations on the number of customer-generators and total capacity of net metering systems that may be interconnected to any distribution feeder line, circuit, or network that the commission or governing body determines are necessary to protect public safety and system reliability.

(3) An electric utility may not require a customer-generator whose net metering system meets the standards in subsections (1) and (2) of this section to comply with additional safety or performance standards, perform or pay for additional tests, or purchase additional liability insurance. However, an electric utility shall not be liable directly or indirectly for permitting or continuing to allow an attachment of a net metering system, or for the acts or omissions of the customer-generator that cause loss or injury, including death, to any third party.

(4) Except when required under the federal public utility regulatory policies act, an electric utility may not establish compensation arrangements or interconnection requirements, other than those permitted in this chapter, for a customer-generator that would have the effect of prohibiting or restricting the ability of a customer-generator to generate or store electricity for consumption on its premises.

Sec. 5. RCW 82.16.090 and 1988 c 228 s 1 are each amended to read as follows:

Any customer billing issued by a light or power business or gas distribution business that serves a total of more than twenty thousand customers and operates within the state shall include the following information:

(1) The rates and amounts of taxes paid directly by the customer upon products or services rendered by the light and power business or gas distribution business; ~~(and)~~

(2) The rate, origin and approximate amount of each tax levied upon the revenue of the light and power business or gas distribution business and added as a component of the amount charged to the customer. Taxes based upon revenue of the light and power business or gas distribution business to be listed on the customer billing need not include taxes levied by the federal government or taxes levied under chapters 54.28, 80.24, or 82.04 RCW; ~~and~~

(3) The total amount of kilowatt-hours of electricity consumed for the most recent twelve-month period or other information that provides the customer with information regarding their energy usage over a twelve-month period.

NEW SECTION. Sec. 6. A new section is added to chapter 19.27 RCW to read as follows:

The state building code council, in consultation with the department of commerce and local governments, shall

conduct a study of the state building code and adopt changes necessary to encourage greater use of renewable energy systems as defined in RCW 82.16.110."

Correct the title.

Signed by Representatives Fitzgibbon, Chair; Lekanoff, Vice Chair; Doglio; Fey; Mead; Peterson and Shewmake.

MINORITY recommendation: Do not pass. Signed by Representatives Shea, Ranking Minority Member; Dye, Assistant Ranking Minority Member and Boehnke.

Referred to Committee on Rules for second reading.

March 28, 2019

SB 5263 Prime Sponsor, Senator Zeiger: Concerning school bus driver requirements. Reported by Committee on Education

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. (1) The office of the superintendent of public instruction, working collaboratively with the Washington state school directors' association, shall survey each school district to determine whether and to what extent state statutory and rule requirements governing the hiring and training of school bus drivers, and other factors, affect or may affect the ability of school districts to hire and retain qualified school bus drivers. The department of licensing shall assist the office of the superintendent of public instruction and the Washington state school directors' association in developing questions to be included in the survey.

(2) By December 13, 2019, the office of the superintendent of public instruction and the Washington state school directors' association shall, in accordance with RCW 43.01.036, jointly report the results of the survey and findings and recommendations to the education and transportation committees of the house of representatives and the senate.

(3) This section expires June 30, 2020."
Correct the title.

Signed by Representatives Santos, Chair; Dolan, Vice Chair; Paul, Vice Chair; Steele, Ranking Minority Member; McCaslin, Assistant Ranking Minority Member; Volz, Assistant Ranking Minority Member; Bergquist; Caldier; Callan; Corry; Harris; Kilduff; Kraft; Ortiz-Self; Rude; Stonier; Thai and Valdez.

Referred to Committee on Rules for second reading.

March 27, 2019

2SSB 5292 Prime Sponsor, Committee on Ways & Means: Concerning prescription drug cost transparency. Reported by Committee on Health Care & Wellness

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

NEW SECTION. **Sec. 1. FINDINGS.** The legislature finds that the state of Washington has substantial public interest in the following:

(1) The price and cost of prescription drugs. Washington state is a major purchaser through the department of corrections, the health care authority, and other entities acting on behalf of a state purchaser;

(2) Enacting this chapter to provide notice and disclosure of information relating to the cost and pricing of prescription drugs in order to provide accountability to the state for prescription drug pricing;

(3) Rising drug costs and consumer ability to access prescription drugs; and

(4) Containing prescription drug costs. It is essential to understand the drivers and impacts of these costs, as transparency is typically the first step toward cost containment and greater consumer access to needed prescription drugs.

NEW SECTION. **Sec. 2. DEFINITIONS.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Authority" means the health care authority.

(2) "Covered drug" means any prescription drug that:

(a) A covered manufacturer intends to introduce to the market at a wholesale acquisition cost of ten thousand dollars or more for a course of treatment lasting less than one month or a thirty-day supply, whichever period is longer; or

(b) Is currently on the market, is manufactured by a covered manufacturer, and has a wholesale acquisition cost of more than one hundred dollars for a course of treatment lasting less than one month or a thirty-day supply, and the manufacturer increases the wholesale acquisition cost at least twenty percent, including the proposed increase and the cumulative increase that occurred two calendar years prior to the date of the proposed increase.

(3) "Covered manufacturer" means a person, corporation, or other entity engaged in the manufacture of prescription drugs sold in or into Washington state. "Covered manufacturer" does not include a private label distributor or retail pharmacy that sells a drug under the retail pharmacy's store, or a prescription drug repackager.

(4) "Data organization" means an organization selected by the authority under section 3 of this act to collect and verify prescription drug pricing data.

(5) "Health care provider," "health plan," and "carrier" mean the same as in RCW 48.43.005.

(6) "Pharmacy benefit manager" means the same as in RCW 19.340.010. "Pharmacy benefit manager" does not include a health maintenance organization as defined in RCW 48.46.020.

(7) "Prescription drug" means a drug regulated under chapter 69.41 or 69.50 RCW. It includes generic, brand name, and specialty drugs, as well as biological products.

(8) "Qualifying price increase" means a price increase described in subsection (2)(b) of this section.

(9) "Wholesale acquisition cost" or "price" means, with respect to a prescription drug, the manufacturer's list price for the drug to wholesalers or direct purchasers in the United States, excluding any discounts, rebates, or reductions in price, for the most recent month for which the information is available, as reported in wholesale price guides or other publications of prescription drug pricing.

NEW SECTION. **Sec. 3. PROCUREMENT PROCESS.** The authority shall use a competitive procurement process in accordance with chapter 39.26 RCW to select a data organization to collect, verify, and summarize the prescription drug pricing data provided by carriers and manufacturers under sections 4 and 5 of this act.

NEW SECTION. **Sec. 4. CARRIER REPORTING AND DATA.** (1) By March 1st of each year, a carrier must submit to the data organization the following prescription drug cost and utilization data for the previous calendar year:

(a) The twenty-five prescription drugs most frequently prescribed by health care providers participating in the carrier's network;

(b) The twenty-five costliest prescription drugs by total health plan spending, and the carrier's total spending for each of these prescription drugs;

(c) The twenty-five drugs with the highest year-over-year increase in prescription drug spending, and the percentages of the increases for each of these prescription drugs; and

(d) A summary analysis of the impact of prescription drug costs on health plan premiums or on spending per medical assistance enrollee under chapter 74.09 RCW, as applicable, disaggregated by the state medicaid program, public employees' benefits board programs, school employees benefits board programs, and the individual, small group, and large group markets.

(2) An employer-sponsored self-funded health plan or a Taft-Hartley trust health plan may voluntarily provide the data described in subsection (1) of this section to the data organization.

NEW SECTION. **Sec. 5. MANUFACTURER REPORTING AND DATA.** (1) Beginning October 1, 2019,

a covered manufacturer must report the following data for each covered drug to the data organization:

(a) A description of the specific financial and nonfinancial factors used to make the decision to increase the wholesale acquisition cost of the drug and the amount of the increase including, but not limited to, an explanation of how these factors explain the increase in the wholesale acquisition cost of the drug;

(b) A schedule of wholesale acquisition cost increases for the drug for the previous five years if the drug was manufactured by the company;

(c) If the drug was acquired by the manufacturer within the previous five years, all of the following information:

(i) The wholesale acquisition cost of the drug at the time of acquisition and in the calendar year prior to acquisition; and

(ii) The name of the company from which the drug was acquired, the date acquired, and the purchase price;

(d) The year the drug was introduced to market and the wholesale acquisition cost of the drug at the time of introduction;

(e) The patent expiration date of the drug if it is under patent;

(f) If the drug is a multiple source drug, an innovator multiple source drug, a noninnovator multiple source drug, or a single source drug;

(g) The itemized cost for production and sales, including annual manufacturing costs, annual marketing and advertising costs, total research and development costs, total costs of clinical trials and regulation, and total cost for acquisition for the drug; and

(h) The total financial assistance given by the manufacturer through assistance programs, rebates, and coupons.

(2) A covered manufacturer must submit this information:

(a) At least sixty days in advance of a qualifying price increase for a covered drug defined in section 2(2)(b) of this act; and

(b) Within thirty days of release of a new covered drug to the market as defined in section 2(2)(a) of this act.

NEW SECTION. Sec. 6. (1) In the event of a drug shortage, a covered manufacturer must report the following information to the authority within thirty days of the shortage occurring:

(a) An explanation of what caused the shortage; and

(b) The estimated duration of the shortage.

(2) Within one hundred eighty days of submitting the notice required in subsection (1) of this section, the covered manufacturer must report to the authority:

(a) Whether the sales of other drugs manufactured by the covered manufacturer increased during the shortage period; and

(b) The name, wholesale acquisition cost, and the amount the sales increased for each drug that increased in sales during the shortage period.

NEW SECTION. Sec. 7. REPORTING TO PURCHASERS. (1) A covered manufacturer must report the information required by subsection (2) of this section no later than sixty days in advance of a qualifying price increase for a covered drug defined in section 2(2)(b) of this act.

(2)(a) Beginning October 1, 2019, a manufacturer of a covered drug shall notify the purchaser of a qualifying price increase in writing at least sixty days prior to the planned effective date of the increase. The notice must include:

(i) The date of the increase, the current wholesale acquisition cost of the prescription drug, and the dollar amount of the future increase in the wholesale acquisition cost of the prescription drug; and

(ii) A statement regarding whether a change or improvement in the drug necessitates the price increase. If so, the manufacturer shall describe the change or improvement.

(b) If a pharmacy benefit manager receives a notice of an increase in wholesale acquisition cost consistent with (a) of this subsection, it shall notify its large contracting public and private purchasers of the increase. For the purposes of this section, a "large purchaser" means a purchaser that provides coverage to more than five hundred covered lives.

(3) The data submitted under this section must be made publicly available on the authority's web site.

NEW SECTION. Sec. 8. ENFORCEMENT. The authority may assess a fine of up to one thousand dollars per day for failure to comply with the requirements of sections 4, 5, 6, and 7 of this act. The assessment of a fine under this section is subject to review under the administrative procedure act, chapter 34.05 RCW. Fines collected under this section must be deposited in the medicaid fraud penalty account created in RCW 74.09.215. The authority shall report any fines levied pursuant to this section against a health carrier to the office of the insurance commissioner.

NEW SECTION. Sec. 9. DATA REPORT TO AUTHORITY. (1) The data organization must compile the data submitted by carriers under section 4 of this act and manufacturers under section 5 of this act and submit the data to the authority in one report.

(2) The authority shall perform an independent analysis of data submitted by the data organization under sections 4, 5, and 6 of this act, and prepare a final report for the public and legislators synthesizing the data under

sections 4, 5, and 6 of this act that demonstrates the overall impact of drug costs on health care premiums. The data in the report must be aggregated and must not reveal information specific to individual health plans.

(3) Beginning January 1, 2020, and by each January 1st thereafter, the authority shall publish the report on its web site.

(4) The authority shall share the information provided by carriers to the organization with the office of the insurance commissioner.

(5) Except for the report, the authority and the office of the insurance commissioner shall keep confidential all of the information provided pursuant to sections 4, 5, and 6 of this act, and the information shall not be subject to public disclosure under chapter 42.56 RCW.

(6) The authority may only use the data reported under this chapter for purposes of analyzing and reporting the data to the public and the legislature. The data may not be used for any other purpose.

(7) The authority must also, using all available claims data from the statewide all-payer health care claims database established in RCW 43.371.020, collect data on drugs prescribed and prescription drug claims submitted to include billed charges and paid charges.

(8) By November 1, 2020, the authority must produce a report for the legislature that includes charts demonstrating the variance in the billed charges and paid charges among carriers for the twenty-five drugs with higher than average variances in billed charges and paid charges based on the data collected in subsection (6) of this section.

NEW SECTION. Sec. 10. RULE MAKING. The authority may adopt any rules necessary to implement the requirements of sections 1 through 9 of this act.

NEW SECTION. Sec. 11. By March 1st of each year, a pharmacy benefit manager must submit to the office of the insurance commissioner the following data from the previous calendar year:

(1) All discounts, including the total dollar amount and percentage discount, and all rebates received from a manufacturer for each drug on the pharmacy benefit manager's formularies;

(2) The total dollar amount of all discounts and rebates that are retained by the pharmacy benefit manager for each drug on the pharmacy benefit manager's formularies;

(3) Actual total reimbursement amounts for each drug the pharmacy benefit manager pays retail pharmacies after all direct and indirect administrative and other fees that have been retrospectively charged to the pharmacies are applied;

(4) The negotiated price health plans pay the pharmacy benefit manager for each drug on the pharmacy benefit manager's formularies;

(5) The amount, terms, and conditions relating to copayments, reimbursement options, and other payments or fees associated with a prescription drug benefit plan;

(6) Disclosure of any ownership interest the pharmacy benefit manager has in a pharmacy or health plan with which it conducts business; and

(7) The results of any appeal filed pursuant to RCW 19.340.100(3).

NEW SECTION. Sec. 12. (1) No later than March 1st of each calendar year, each pharmacy benefit manager must file with the office of the insurance commissioner, in the form and detail as required by the insurance commissioner, a report for the preceding calendar year stating that the pharmacy benefit manager is in compliance with this chapter.

(2) An employer-sponsored self-funded health plan or a Taft-Hartley trust health plan may voluntarily provide the data described in subsection (1) of this section.

NEW SECTION. Sec. 13. A pharmacy benefit manager may not cause or knowingly permit the use of any advertisement, promotion, solicitation, representation, proposal, or offer that is untrue, deceptive, or misleading.

NEW SECTION. Sec. 14. The office of the insurance commissioner shall have the authority to examine or audit the financial records of a pharmacy benefit manager for purposes of ensuring the information submitted under section 11 of this act is accurate. Information the office of the insurance commissioner acquires in an examination of financial records pursuant to this section is proprietary and confidential.

NEW SECTION. Sec. 15. (1) The office of the insurance commissioner shall analyze the data submitted by the pharmacy benefit managers under section 11 of this act, and prepare a final report for the public and legislators synthesizing the data under section 11 of this act. The data in the report must be aggregated and must not reveal information specific to individual health plans or pharmacy benefit managers.

(2) Beginning December 1, 2020, and by each December 1st thereafter, the office of the insurance commissioner shall publish the report on its web site.

(3) Except for the report, the office of the insurance commissioner shall keep confidential all of the information provided pursuant to sections 11 and 14 of this act, and the information is not subject to public disclosure under chapter 42.56 RCW.

NEW SECTION. Sec. 16. The office of the insurance commissioner may assess a fine of up to one thousand dollars per day for a violation or failure to comply with the requirements of sections 11, 12, 13, and 14 of this act. The assessment of a fine under this section is subject to review under the administrative procedure act, chapter 34.05 RCW.

NEW SECTION. Sec. 17. The insurance commissioner may adopt any rules necessary to implement the requirements of sections 11 through 16 of this act.

Sec. 18. RCW 74.09.215 and 2013 2nd sp.s. c 4 s 1902, 2013 2nd sp.s. c 4 s 997, and 2013 2nd sp.s. c 4 s 995 are each reenacted and amended to read as follows:

The medicaid fraud penalty account is created in the state treasury. All receipts from civil penalties collected under RCW 74.09.210, all receipts received under judgments or settlements that originated under a filing under the federal false claims act, all receipts from fines received pursuant to section 8 of this act, and all receipts received under judgments or settlements that originated under the state medicaid fraud false claims act, chapter 74.66 RCW, must be deposited into the account. Moneys in the account may be spent only after appropriation and must be used only for medicaid services, fraud detection and prevention activities, recovery of improper payments, for other medicaid fraud enforcement activities, and the prescription monitoring program established in chapter 70.225 RCW. For the 2013-2015 fiscal biennium, moneys in the account may be spent on inpatient and outpatient rebasing and conversion to the tenth version of the international classification of diseases. For the 2011-2013 fiscal biennium, moneys in the account may be spent on inpatient and outpatient rebasing.

NEW SECTION. Sec. 19. Sections 1 through 17 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. Sec. 20. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2019, in the omnibus appropriations act, this act is null and void."

Correct the title.

Signed by Representatives Cody, Chair; Macri, Vice Chair; Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Chambers; Davis; Jinkins; Riccelli; Robinson; Stonier; Thai and Tharinger.

MINORITY recommendation: Without recommendation. Signed by Representatives DeBolt and Harris.

Referred to Committee on Appropriations.

April 8, 2019

ESSB 5311 Prime Sponsor, Committee on State Government, Tribal Relations & Elections: Eliminating, revising, or decodifying obsolete or inactive statutory provisions that concern the office of financial management. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass. Signed by Representatives Ormsby, Chair; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier; Chandler; Cody; Dolan; Dye; Fitzgibbon; Hansen; Hoff; Hudgins; Jinkins; Kraft; Macri; Mosbrucker; Pettigrew; Pollet; Ryu; Schmick; Senn; Springer; Stanford; Steele; Sullivan; Sutherland; Tarleton; Tharinger and Ybarra.

MINORITY recommendation: Without recommendation. Signed by Representative Stokesbary, Ranking Minority Member.

Referred to Committee on Rules.

April 8, 2019

ESSB 5318 Prime Sponsor, Committee on Labor & Commerce: Reforming the compliance and enforcement provisions for marijuana licensees. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Appropriations and without amendment by Committee on Commerce & Gaming.

Strike everything after the enacting clause and insert the following:

"**NEW SECTION. Sec. 1.** The legislature finds that:

(1) In the years since the creation of a legal and regulated marketplace for adult use of cannabis, the industry, stakeholders, and state agencies have collaborated to develop a safe, fully regulated marketplace.

(2) As the regulated marketplace has been developing, Washington residents with a strong entrepreneurial spirit have taken great financial and personal risk to become licensed and part of this nascent industry.

(3) It should not be surprising that mistakes have been made both by licensees and regulators, and that both have learned from these mistakes leading to a stronger, safer industry.

(4) While a strong focus on enforcement is an important component of the regulated marketplace, a strong focus on compliance and education is also critically necessary to assist licensees who strive for compliance and in order to allow the board to focus its enforcement priorities

on those violations that directly harm public health and safety.

(5) The risk taking entrepreneurs who are trying to comply with board regulations should not face punitive consequences for mistakes made during this initial phase of the industry that did not pose a direct threat to public health and safety.

NEW SECTION. Sec. 2. A new section is added to chapter 43.05 RCW to read as follows:

(1) If, during an inspection or visit to a marijuana business licensed under chapter 69.50 RCW that is not a technical assistance visit, the liquor and cannabis board becomes aware of conditions that are not in compliance with applicable laws and rules enforced by the board and are not subject to civil penalties as provided for in section 3 of this act, the board may issue a notice of correction to the licensee that includes:

(a) A description of the condition that is not in compliance and the text of the specific section or subsection of the applicable state law or rule;

(b) A statement of what is required to achieve compliance;

(c) The date by which the board requires compliance to be achieved;

(d) Notice of the means to contact any technical assistance services provided by the board or others; and

(e) Notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with the board.

(2) A notice of correction is not a formal enforcement action, is not subject to appeal, and is a public record.

(3) If the liquor and cannabis board issues a notice of correction, it may not issue a civil penalty for the violations identified in the notice of correction unless the licensee fails to comply with the notice.

NEW SECTION. Sec. 3. A new section is added to chapter 69.50 RCW to read as follows:

(1) The liquor and cannabis board may issue a civil penalty without first issuing a notice of correction if:

(a) The licensee has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule or has been given previous notice of the same or similar type of violation of the same statute or rule;

(b) Compliance is not achieved by the date established by the liquor and cannabis board in a previously issued notice of correction and if the board has responded to a request for review of the date by reaffirming the original date or establishing a new date; or

(c) The board can prove by a preponderance of the evidence:

(i) Diversion of marijuana product to the illicit market or sales across state lines;

(ii) Intentional furnishing of marijuana product to minors;

(iii) Diversion of revenue to criminal enterprises, gangs, cartels, or parties not qualified to hold a marijuana license based on criminal history requirements; or

(iv) The commission of nonmarijuana-related crimes.

(2) The liquor and cannabis board may adopt rules to implement this section and section 2 of this act.

Sec. 4. RCW 69.50.342 and 2015 2nd sp.s. c 4 s 1601 are each amended to read as follows:

(1) For the purpose of carrying into effect the provisions of chapter 3, Laws of 2013 according to their true intent or of supplying any deficiency therein, the state liquor and cannabis board may adopt rules not inconsistent with the spirit of chapter 3, Laws of 2013 as are deemed necessary or advisable. Without limiting the generality of the preceding sentence, the state liquor and cannabis board is empowered to adopt rules regarding the following:

(a) The equipment and management of retail outlets and premises where marijuana is produced or processed, and inspection of the retail outlets and premises where marijuana is produced or processed;

(b) The books and records to be created and maintained by licensees, the reports to be made thereon to the state liquor and cannabis board, and inspection of the books and records;

(c) Methods of producing, processing, and packaging marijuana, useable marijuana, marijuana concentrates, and marijuana-infused products; conditions of sanitation; safe handling requirements; approved pesticides and pesticide testing requirements; and standards of ingredients, quality, and identity of marijuana, useable marijuana, marijuana concentrates, and marijuana-infused products produced, processed, packaged, or sold by licensees;

(d) Security requirements for retail outlets and premises where marijuana is produced or processed, and safety protocols for licensees and their employees;

(e) Screening, hiring, training, and supervising employees of licensees;

(f) Retail outlet locations and hours of operation;

(g) Labeling requirements and restrictions on advertisement of marijuana, useable marijuana, marijuana concentrates, cannabis health and beauty aids, and marijuana-infused products for sale in retail outlets;

(h) Forms to be used for purposes of this chapter and chapter 69.51A RCW or the rules adopted to implement and

enforce these chapters, the terms and conditions to be contained in licenses issued under this chapter and chapter 69.51A RCW, and the qualifications for receiving a license issued under this chapter and chapter 69.51A RCW, including a criminal history record information check. The state liquor and cannabis board may submit any criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The state liquor and cannabis board must require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation;

(i) Application, reinstatement, and renewal fees for licenses issued under this chapter and chapter 69.51A RCW, and fees for anything done or permitted to be done under the rules adopted to implement and enforce this chapter and chapter 69.51A RCW;

(j) The manner of giving and serving notices required by this chapter and chapter 69.51A RCW or rules adopted to implement or enforce these chapters;

(k) Times and periods when, and the manner, methods, and means by which, licensees transport and deliver marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products within the state;

(l) Identification, seizure, confiscation, destruction, or donation to law enforcement for training purposes of all marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products produced, processed, sold, or offered for sale within this state which do not conform in all respects to the standards prescribed by this chapter or chapter 69.51A RCW or the rules adopted to implement and enforce these chapters.

(2) Rules adopted on retail outlets holding medical marijuana endorsements must be adopted in coordination and consultation with the department.

(3) The board must adopt rules to perfect and expand existing programs for compliance education for licensed marijuana businesses and their employees. The rules must include a voluntary compliance program created in consultation with licensed marijuana businesses and their employees. The voluntary compliance program must include recommendations on abating violations of this chapter and rules adopted under this chapter.

NEW SECTION. Sec. 5. A new section is added to chapter 69.50 RCW to read as follows:

(1) The board may grant a licensee's application for advice and consultation as provided in RCW 69.50.342(3) and visit the licensee's licensed premises in order to provide such advice and consultation. Advice and consultation services are limited to the matters specified in the request affecting the interpretation and applicability of the standards in this chapter to the conditions, structures, machines, equipment, apparatus, devices, materials, methods, means, and practices in the licensee's licensed premises. The board

may provide for an alternative means of affording consultation and advice other than on-site consultation.

(2) The board must make recommendations on eliminating areas of concern disclosed within the scope of the on-site consultation. A visit to a licensee's licensed premises may not be considered an inspection or investigation under this chapter. During the visit, the board may not issue notices or citations and may not assess civil penalties. However, if the on-site visit discloses a violation with a direct or immediate relationship to public safety and the violation is not corrected, the board may investigate.

(3) This section does not provide immunity to a licensee who has applied for consultative services from inspections or investigations conducted under this chapter or from any inspection conducted as a result of a complaint before, during, or after the provision of consultative services.

(4) This section does not require an inspection of a licensee's licensed premises that has been visited for consultative purposes. However, if the premises are inspected after a visit, the board may consider any information obtained during the consultation visit in determining the nature of an alleged violation and the amount of penalties to be assessed, if any.

(5) Rules adopted under section 6 of this act must provide that violations with a direct or immediate relationship to public safety discovered during the consultation visit must be corrected within a specified period of time and an inspection must be conducted at the end of that time period.

(6) All licensees requesting consultative services must be advised of this section and the rules adopted by the board relating to the voluntary compliance program. Valuable formulae or financial or proprietary commercial information records received during a consultative visit or while providing consultative services in accordance with this section are not subject to inspection pursuant to chapter 42.56 RCW.

(7) The board may adopt rules on the frequency, manner, and method of providing consultative services to licensees. Rules may include scheduling of consultative services and prioritizing requests for the services while maintaining the enforcement requirements of this chapter.

NEW SECTION. Sec. 6. A new section is added to chapter 69.50 RCW to read as follows:

(1) The board must prescribe procedures for the following:

(a) Issuance of written warnings or notices to correct in lieu of penalties, sanctions, or other violations with respect to regulatory violations that have no direct or immediate relationship to public safety as defined by the board;

(b) Waiving any fines, civil penalties, or administrative sanctions for violations, that have no direct or immediate relationship to public safety, and are corrected by

the licensee within a reasonable amount of time as designated by the board; and

(c) A compliance program in accordance with chapter 43.05 RCW and RCW 69.50.342, whereby licensees may request compliance assistance and inspections without issuance of a penalty, sanction, or other violation provided that any noncompliant issues are resolved within a specified period of time.

(2) The board must adopt rules prescribing penalties for violations of this chapter. The board:

(a) May establish escalating penalties for violation of this chapter, provided that the cumulative effect of any such escalating penalties cannot last beyond two years and the escalation applies only to multiple violations that are the same or similar in nature;

(b) May not include cancellation of a license for a single violation, unless the board can prove by a preponderance of the evidence:

(i) Diversion of marijuana product to the illicit market or sales across state lines;

(ii) Intentional furnishing of marijuana product to minors;

(iii) Diversion of revenue to criminal enterprises, gangs, cartels, or parties not qualified to hold a marijuana license based on criminal history requirements; or

(iv) The commission of nonmarijuana-related crimes;

(c) May include cancellation of a license for cumulative violations only if a marijuana licensee commits at least four violations within a two-year period of time;

(d) Must consider aggravating and mitigating circumstances and deviate from the prescribed penalties accordingly, and must authorize enforcement officers to do the same, provided that such penalty may not exceed the maximum escalating penalty prescribed by the board for that violation; and

(e) May not issue a violation if there is employee misconduct that led to the violation if the licensee provides documentation that before the date of the violation the licensee:

(i) Established a compliance program designed to prevent the violation;

(ii) Performed meaningful training with employees designed to prevent the violation; and

(iii) Had not enabled or ignored the violation or other similar violations in the past.

(3) The board may not consider any violation that occurred more than two years prior as grounds for denial, suspension, revocation, cancellation, or nonrenewal, unless the board can prove by a preponderance of the evidence that the prior administrative violation evidences:

(a) Diversion of marijuana product to the illicit market or sales across state lines;

(b) Intentional furnishing of marijuana product to minors;

(c) Diversion of revenue to criminal enterprises, gangs, cartels, or parties not qualified to hold a marijuana license based on criminal history requirements; or

(d) The commission of nonmarijuana-related crimes.

Sec. 7. RCW 69.50.331 and 2017 c 317 s 2 are each amended to read as follows:

(1) For the purpose of considering any application for a license to produce, process, research, transport, or deliver marijuana, useable marijuana, marijuana concentrates, or marijuana-infused products subject to the regulations established under RCW 69.50.385, or sell marijuana, or for the renewal of a license to produce, process, research, transport, or deliver marijuana, useable marijuana, marijuana concentrates, or marijuana-infused products subject to the regulations established under RCW 69.50.385, or sell marijuana, the ~~((state liquor and cannabis))~~ board must conduct a comprehensive, fair, and impartial evaluation of the applications timely received.

(a) The ~~((state liquor and cannabis))~~ board may cause an inspection of the premises to be made, and may inquire into all matters in connection with the construction and operation of the premises. For the purpose of reviewing any application for a license and for considering the denial, suspension, revocation, cancellation, or renewal or denial thereof, of any license, the ~~((state liquor and cannabis))~~ board may consider any prior criminal ~~((conduct))~~ arrests or convictions of the applicant ~~((including an))~~, any public safety administrative violation history record with the ~~((state liquor and cannabis))~~ board, and a criminal history record information check. The ~~((state liquor and cannabis))~~ board may submit the criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The ~~((state liquor and cannabis))~~ board must require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation. The provisions of RCW 9.95.240 and of chapter 9.96A RCW do not apply to these cases. Subject to the provisions of this section, the ~~((state liquor and cannabis))~~ board may, in its discretion, grant or deny the renewal or license applied for. Denial may be based on, without limitation, the existence of chronic illegal activity documented in objections submitted pursuant to subsections (7)(c) and (10) of this section. Authority to approve an uncontested or unopposed license may be granted by the ~~((state liquor and cannabis))~~ board to any staff member the board designates in writing. Conditions for granting this authority must be adopted by rule.

(b) No license of any kind may be issued to:

(i) A person under the age of twenty-one years;

(ii) A person doing business as a sole proprietor who has not lawfully resided in the state for at least six months prior to applying to receive a license;

(iii) A partnership, employee cooperative, association, nonprofit corporation, or corporation unless formed under the laws of this state, and unless all of the members thereof are qualified to obtain a license as provided in this section; or

(iv) A person whose place of business is conducted by a manager or agent, unless the manager or agent possesses the same qualifications required of the licensee.

(2)(a) The ~~((state liquor and cannabis))~~ board may, in its discretion, subject to ~~((the provisions of))~~ sections 2, 3, and 6 of this act, RCW 69.50.334, and 69.50.342(3) suspend or cancel any license; and all protections of the licensee from criminal or civil sanctions under state law for producing, processing, researching, or selling marijuana, marijuana concentrates, useable marijuana, or marijuana-infused products thereunder must be suspended or terminated, as the case may be.

(b) The ~~((state liquor and cannabis))~~ board must immediately suspend the license of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license is automatic upon the ~~((state liquor and cannabis))~~ board's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

(c) The ~~((state liquor and cannabis))~~ board may request the appointment of administrative law judges under chapter 34.12 RCW who shall have power to administer oaths, issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony, examine witnesses, ~~((and to))~~ receive testimony in any inquiry, investigation, hearing, or proceeding in any part of the state, and consider mitigating and aggravating circumstances in any case and deviate from any prescribed penalty, under rules ((and regulations)) the ~~((state liquor and cannabis))~~ board may adopt.

(d) Witnesses must be allowed fees and mileage each way to and from any inquiry, investigation, hearing, or proceeding at the rate authorized by RCW 34.05.446. Fees need not be paid in advance of appearance of witnesses to testify or to produce books, records, or other legal evidence.

(e) In case of disobedience of any person to comply with the order of the ~~((state liquor and cannabis))~~ board or a subpoena issued by the ~~((state liquor and cannabis))~~ board, or any of its members, or administrative law judges, or on the refusal of a witness to testify to any matter regarding which he or she may be lawfully interrogated, the judge of the superior court of the county in which the person resides, on application of any member of the board or administrative law judge, compels obedience by contempt proceedings, as in the case of disobedience of the requirements of a subpoena issued from said court or a refusal to testify therein.

(3) Upon receipt of notice of the suspension or cancellation of a license, the licensee must forthwith deliver up the license to the ~~((state liquor and cannabis))~~ board. Where the license has been suspended only, the ~~((state liquor and cannabis))~~ board must return the license to the licensee at the expiration or termination of the period of suspension. The ~~((state liquor and cannabis))~~ board must notify all other licensees in the county where the subject licensee has its premises of the suspension or cancellation of the license; and no other licensee or employee of another licensee may allow or cause any marijuana, marijuana concentrates, useable marijuana, or marijuana-infused products to be delivered to or for any person at the premises of the subject licensee.

(4) Every license issued under this chapter is subject to all conditions and restrictions imposed by this chapter or by rules adopted by the ~~((state liquor and cannabis))~~ board to implement and enforce this chapter. All conditions and restrictions imposed by the ~~((state liquor and cannabis))~~ board in the issuance of an individual license must be listed on the face of the individual license along with the trade name, address, and expiration date.

(5) Every licensee must post and keep posted its license, or licenses, in a conspicuous place on the premises.

(6) No licensee may employ any person under the age of twenty-one years.

(7)(a) Before the ~~((state liquor and cannabis))~~ board issues a new or renewed license to an applicant it must give notice of the application to the chief executive officer of the incorporated city or town, if the application is for a license within an incorporated city or town, or to the county legislative authority, if the application is for a license outside the boundaries of incorporated cities or towns, or to the tribal government if the application is for a license within Indian country, or to the port authority if the application for a license is located on property owned by a port authority.

(b) The incorporated city or town through the official or employee selected by it, the county legislative authority or the official or employee selected by it, the tribal government, or port authority has the right to file with the ~~((state liquor and cannabis))~~ board within twenty days after the date of transmittal of the notice for applications, or at least thirty days prior to the expiration date for renewals, written objections against the applicant or against the premises for which the new or renewed license is asked. The ~~((state liquor and cannabis))~~ board may extend the time period for submitting written objections upon request from the authority notified by the ~~((state liquor and cannabis))~~ board.

(c) The written objections must include a statement of all facts upon which the objections are based, and in case written objections are filed, the city or town or county legislative authority may request, and the ~~((state liquor and cannabis))~~ board may in its discretion hold, a hearing subject to the applicable provisions of Title 34 RCW. If the ~~((state liquor and cannabis))~~ board makes an initial decision to deny a license or renewal based on the written objections of an incorporated city or town or county legislative authority, the applicant may request a hearing subject to the applicable provisions of Title 34 RCW. If a hearing is held at the request

of the applicant, (~~state liquor and cannabis~~) board representatives must present and defend the (~~state liquor and cannabis~~) board's initial decision to deny a license or renewal.

(d) Upon the granting of a license under this title the (~~state liquor and cannabis~~) board must send written notification to the chief executive officer of the incorporated city or town in which the license is granted, or to the county legislative authority if the license is granted outside the boundaries of incorporated cities or towns.

(8)(a) Except as provided in (b) through (d) of this subsection, the (~~state liquor and cannabis~~) board may not issue a license for any premises within one thousand feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, or library, or any game arcade admission to which is not restricted to persons aged twenty-one years or older.

(b) A city, county, or town may permit the licensing of premises within one thousand feet but not less than one hundred feet of the facilities described in (a) of this subsection, except elementary schools, secondary schools, and playgrounds, by enacting an ordinance authorizing such distance reduction, provided that such distance reduction will not negatively impact the jurisdiction's civil regulatory enforcement, criminal law enforcement interests, public safety, or public health.

(c) A city, county, or town may permit the licensing of research premises allowed under RCW 69.50.372 within one thousand feet but not less than one hundred feet of the facilities described in (a) of this subsection by enacting an ordinance authorizing such distance reduction, provided that the ordinance will not negatively impact the jurisdiction's civil regulatory enforcement, criminal law enforcement, public safety, or public health.

(d) The (~~state liquor and cannabis~~) board may license premises located in compliance with the distance requirements set in an ordinance adopted under (b) or (c) of this subsection. Before issuing or renewing a research license for premises within one thousand feet but not less than one hundred feet of an elementary school, secondary school, or playground in compliance with an ordinance passed pursuant to (c) of this subsection, the board must ensure that the facility:

(i) Meets a security standard exceeding that which applies to marijuana producer, processor, or retailer licensees;

(ii) Is inaccessible to the public and no part of the operation of the facility is in view of the general public; and

(iii) Bears no advertising or signage indicating that it is a marijuana research facility.

(e) The (~~state liquor and cannabis~~) board may not issue a license for any premises within Indian country, as defined in 18 U.S.C. Sec. 1151, including any fee patent lands within the exterior boundaries of a reservation, without the consent of the federally recognized tribe associated with the reservation or Indian country.

(9) A city, town, or county may adopt an ordinance prohibiting a marijuana producer or marijuana processor from operating or locating a business within areas zoned primarily for residential use or rural use with a minimum lot size of five acres or smaller.

(10) In determining whether to grant or deny a license or renewal of any license, the (~~state liquor and cannabis~~) board must give substantial weight to objections from an incorporated city or town or county legislative authority based upon chronic illegal activity associated with the applicant's operations of the premises proposed to be licensed or the applicant's operation of any other licensed premises, or the conduct of the applicant's patrons inside or outside the licensed premises. "Chronic illegal activity" means (a) a pervasive pattern of activity that threatens the public health, safety, and welfare of the city, town, or county including, but not limited to, open container violations, assaults, disturbances, disorderly conduct, or other criminal law violations, or as documented in crime statistics, police reports, emergency medical response data, calls for service, field data, or similar records of a law enforcement agency for the city, town, county, or any other municipal corporation or any state agency; or (b) an unreasonably high number of citations for violations of RCW 46.61.502 associated with the applicant's or licensee's operation of any licensed premises as indicated by the reported statements given to law enforcement upon arrest.

NEW SECTION. Sec. 8. A new section is added to chapter 69.50 RCW to read as follows:

(1) This section applies to the board's issuance of administrative violations to licensed marijuana producers, processors, retailers, transporters, and researchers, when a settlement conference is held between a hearing officer or designee of the board and the marijuana licensee that received a notice of an alleged administrative violation or violations.

(2) If a settlement agreement is entered between a marijuana licensee and a hearing officer or designee of the board at or after a settlement conference, the terms of the settlement agreement must be given substantial weight by the board.

(3) For the purposes of this section:

(a) "Settlement agreement" means the agreement or compromise between a licensed marijuana producer, processor, retailer, researcher, transporter, or researcher and the hearing officer or designee of the board with authority to participate in the settlement conference, that:

(i) Includes the terms of the agreement or compromise regarding an alleged violation or violations by the licensee of this chapter, chapter 69.51A RCW, or rules adopted under either chapter, and any related penalty or licensing restriction; and

(ii) Is in writing and signed by the licensee and the hearing officer or designee of the board.

(b) "Settlement conference" means a meeting or discussion between a licensed marijuana producer,

processor, retailer, researcher, transporter, researcher, or authorized representative of any of the preceding licensees, and a hearing officer or designee of the board, held for purposes such as discussing the circumstances surrounding an alleged violation of law or rules by the licensee, the recommended penalty, and any aggravating or mitigating factors, and that is intended to resolve the alleged violation before an administrative hearing or judicial proceeding is initiated.

Sec. 9. RCW 69.50.101 and 2018 c 132 s 2 are each reenacted and amended to read as follows:

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

(a) "Administer" means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:

(1) a practitioner authorized to prescribe (or, by the practitioner's authorized agent); or

(2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseperson, or employee of the carrier or warehouseperson.

(c) "CBD concentration" has the meaning provided in RCW 69.51A.010.

(d) "CBD product" means any product containing or consisting of cannabidiol.

(e) "Commission" means the pharmacy quality assurance commission.

(f) "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through V as set forth in federal or state laws, or federal or commission rules, but does not include industrial hemp as defined in RCW 15.120.010.

(g)(1) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II and:

(i) that has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II; or

(ii) with respect to a particular individual, that the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II.

(2) The term does not include:

(i) a controlled substance;

(ii) a substance for which there is an approved new drug application;

(iii) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the federal food, drug, and cosmetic act, 21 U.S.C. Sec. 355, or chapter 69.77 RCW to the extent conduct with respect to the substance is pursuant to the exemption; or

(iv) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

(h) "Deliver" or "delivery" means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

(i) "Department" means the department of health.

(j) "Designated provider" has the meaning provided in RCW 69.51A.010.

(k) "Dispense" means the interpretation of a prescription or order for a controlled substance and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(l) "Dispenser" means a practitioner who dispenses.

(m) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(n) "Distributor" means a person who distributes.

(o) "Drug" means (1) a controlled substance recognized as a drug in the official United States pharmacopoeia/national formulary or the official homeopathic pharmacopoeia of the United States, or any supplement to them; (2) controlled substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals; (3) controlled substances (other than food) intended to affect the structure or any function of the body of individuals or animals; and (4) controlled substances intended for use as a component of any article specified in (1), (2), or (3) of this subsection. The term does not include devices or their components, parts, or accessories.

(p) "Drug enforcement administration" means the drug enforcement administration in the United States Department of Justice, or its successor agency.

(q) "Electronic communication of prescription information" means the transmission of a prescription or refill authorization for a drug of a practitioner using computer systems. The term does not include a prescription or refill authorization verbally transmitted by telephone nor a facsimile manually signed by the practitioner.

(r) "Immature plant or clone" means a plant or clone that has no flowers, is less than twelve inches in height, and is less than twelve inches in diameter.

(s) "Immediate precursor" means a substance:

(1) that the commission has found to be and by rule designates as being the principal compound commonly used, or produced primarily for use, in the manufacture of a controlled substance;

(2) that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance; and

(3) the control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

(t) "Isomer" means an optical isomer, but in subsection (ff)(5) of this section, RCW 69.50.204(a) (12) and (34), and 69.50.206(b)(4), the term includes any geometrical isomer; in RCW 69.50.204(a) (8) and (42), and 69.50.210(c) the term includes any positional isomer; and in RCW 69.50.204(a)(35), 69.50.204(c), and 69.50.208(a) the term includes any positional or geometric isomer.

(u) "Lot" means a definite quantity of marijuana, marijuana concentrates, useable marijuana, or marijuana-infused product identified by a lot number, every portion or package of which is uniform within recognized tolerances for the factors that appear in the labeling.

(v) "Lot number" must identify the licensee by business or trade name and Washington state unified business identifier number, and the date of harvest or processing for each lot of marijuana, marijuana concentrates, useable marijuana, or marijuana-infused product.

(w) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation, compounding, packaging, repackaging, labeling, or relabeling of a controlled substance:

(1) by a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(x) "Marijuana" or "marihuana" means all parts of the plant *Cannabis*, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include:

(1) The mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted

therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination; or

(2) Industrial hemp as defined in RCW 15.120.010.

(y) "Marijuana concentrates" means products consisting wholly or in part of the resin extracted from any part of the plant *Cannabis* and having a THC concentration greater than ten percent.

(z) "Marijuana processor" means a person licensed by the state liquor and cannabis board to process marijuana into marijuana concentrates, useable marijuana, and marijuana-infused products, package and label marijuana concentrates, useable marijuana, and marijuana-infused products for sale in retail outlets, and sell marijuana concentrates, useable marijuana, and marijuana-infused products at wholesale to marijuana retailers.

(aa) "Marijuana producer" means a person licensed by the state liquor and cannabis board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

(bb) "Marijuana products" means useable marijuana, marijuana concentrates, and marijuana-infused products as defined in this section.

(cc) "Marijuana researcher" means a person licensed by the state liquor and cannabis board to produce, process, and possess marijuana for the purposes of conducting research on marijuana and marijuana-derived drug products.

(dd) "Marijuana retailer" means a person licensed by the state liquor and cannabis board to sell marijuana concentrates, useable marijuana, and marijuana-infused products in a retail outlet.

(ee) "Marijuana-infused products" means products that contain marijuana or marijuana extracts, are intended for human use, are derived from marijuana as defined in subsection (x) of this section, and have a THC concentration no greater than ten percent. The term "marijuana-infused products" does not include either useable marijuana or marijuana concentrates.

(ff) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium, opium derivative, and any derivative of opium or opium derivative, including their salts, isomers, and salts of isomers, whenever the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation. The term does not include the isoquinoline alkaloids of opium.

(2) Synthetic opiate and any derivative of synthetic opiate, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation.

(3) Poppy straw and concentrate of poppy straw.

(4) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives or ecgonine or their salts have been removed.

(5) Cocaine, or any salt, isomer, or salt of isomer thereof.

(6) Cocaine base.

(7) Ecgonine, or any derivative, salt, isomer, or salt of isomer thereof.

(8) Any compound, mixture, or preparation containing any quantity of any substance referred to in subparagraphs (1) through (7).

(gg) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term includes opium, substances derived from opium (opium derivatives), and synthetic opiates. The term does not include, unless specifically designated as controlled under RCW 69.50.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term includes the racemic and levorotatory forms of dextromethorphan.

(hh) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

(ii) "Person" means individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(jj) "Plant" has the meaning provided in RCW 69.51A.010.

(kk) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(ll) "Practitioner" means:

(1) A physician under chapter 18.71 RCW; a physician assistant under chapter 18.71A RCW; an osteopathic physician and surgeon under chapter 18.57 RCW; an osteopathic physician assistant under chapter 18.57A RCW who is licensed under RCW 18.57A.020 subject to any limitations in RCW 18.57A.040; an optometrist licensed under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010 subject to any limitations in RCW 18.53.010; a dentist under chapter 18.32 RCW; a podiatric physician and surgeon under chapter 18.22 RCW; a veterinarian under chapter 18.92 RCW; a registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW; a naturopathic physician under chapter 18.36A RCW who is licensed under RCW 18.36A.030 subject to any limitations in RCW 18.36A.040; a pharmacist under chapter 18.64 RCW or a scientific investigator under this chapter, licensed, registered or otherwise permitted insofar as is consistent with those licensing laws to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of their professional practice or research in this state.

(2) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

(3) A physician licensed to practice medicine and surgery, a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, a licensed physician assistant or a licensed osteopathic physician assistant specifically approved to prescribe controlled substances by his or her state's medical quality assurance commission or equivalent and his or her supervising physician, an advanced registered nurse practitioner licensed to prescribe controlled substances, or a veterinarian licensed to practice veterinary medicine in any state of the United States.

(mm) "Prescription" means an order for controlled substances issued by a practitioner duly authorized by law or rule in the state of Washington to prescribe controlled substances within the scope of his or her professional practice for a legitimate medical purpose.

(nn) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

(oo) "Qualifying patient" has the meaning provided in RCW 69.51A.010.

(pp) "Recognition card" has the meaning provided in RCW 69.51A.010.

(qq) "Retail outlet" means a location licensed by the state liquor and cannabis board for the retail sale of marijuana concentrates, useable marijuana, and marijuana-infused products.

(rr) "Secretary" means the secretary of health or the secretary's designee.

(ss) "State," unless the context otherwise requires, means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(tt) "THC concentration" means percent of delta-9 tetrahydrocannabinol content per dry weight of any part of the plant *Cannabis*, or per volume or weight of marijuana product, or the combined percent of delta-9 tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant *Cannabis* regardless of moisture content.

(uu) "Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

(vv) "Useable marijuana" means dried marijuana flowers. The term "useable marijuana" does not include either marijuana-infused products or marijuana concentrates.

(ww) "Board" means the Washington state liquor and cannabis board.

Sec. 10. RCW 42.56.270 and 2018 c 201 s 8008, 2018 c 196 s 21, and 2018 c 4 s 9 are each reenacted and amended to read as follows:

The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070;

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.325, 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency;

(5) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW;

(6) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information;

(7) Financial and valuable trade information under RCW 51.36.120;

(8) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW;

(9) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010;

(10)(a) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or

other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), marijuana producer, processor, or retailer license, liquor license, gambling license, or lottery retail license;

(b) Internal control documents, independent auditors' reports and financial statements, and supporting documents: (i) Of house-banked social card game licensees required by the gambling commission pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes with an approved tribal/state compact for class III gaming;

(c) Valuable formulae or financial or proprietary commercial information records received during a consultative visit or while providing consultative services to a licensed marijuana business in accordance with section 5 of this act:

(11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services or the health care authority for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011;

(12)(a) When supplied to and in the records of the department of commerce:

(i) Financial and proprietary information collected from any person and provided to the department of commerce pursuant to RCW 43.330.050(8); and

(ii) Financial or proprietary information collected from any person and provided to the department of commerce or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business;

(b) When developed by the department of commerce based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;

(c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;

(d) If there is no written contact for a period of sixty days to the department of commerce from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter;

(13) Financial and proprietary information submitted to or obtained by the department of ecology or the authority created under chapter 70.95N RCW to implement chapter 70.95N RCW;

(14) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in

applications for, or delivery of, grants under chapter 43.350 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information;

(15) Financial and commercial information provided as evidence to the department of licensing as required by RCW 19.112.110 or 19.112.120, except information disclosed in aggregate form that does not permit the identification of information related to individual fuel licensees;

(16) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department of natural resources under RCW 78.44.085;

(17)(a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;

(b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.56.610 and 90.64.190;

(18) Financial, commercial, operations, and technical and research information and data submitted to or obtained by a health sciences and services authority in applications for, or delivery of, grants under RCW 35.104.010 through 35.104.060, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

(19) Information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business;

(20) Financial and commercial information submitted to or obtained by the University of Washington, other than information the university is required to disclose under RCW 28B.20.150, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the University of Washington consolidated endowment fund or to result in private loss to the providers of this information;

(21) Market share data submitted by a manufacturer under RCW 70.95N.190(4);

(22) Financial information supplied to the department of financial institutions or to a portal under RCW 21.20.883, when filed by or on behalf of an issuer of securities for the purpose of obtaining the exemption from state securities registration for small securities offerings provided under RCW 21.20.880 or when filed by or on behalf of an investor for the purpose of purchasing such securities;

(23) Unaggregated or individual notices of a transfer of crude oil that is financial, proprietary, or commercial information, submitted to the department of ecology pursuant to RCW 90.56.565(1)(a), and that is in the possession of the department of ecology or any entity with

which the department of ecology has shared the notice pursuant to RCW 90.56.565;

(24) Financial institution and retirement account information, and building security plan information, supplied to the liquor and cannabis board pursuant to RCW 69.50.325, 69.50.331, 69.50.342, and 69.50.345, when filed by or on behalf of a licensee or prospective licensee for the purpose of obtaining, maintaining, or renewing a license to produce, process, transport, or sell marijuana as allowed under chapter 69.50 RCW;

(25) Marijuana transport information, vehicle and driver identification data, and account numbers or unique access identifiers issued to private entities for traceability system access, submitted by an individual or business to the liquor and cannabis board under the requirements of RCW 69.50.325, 69.50.331, 69.50.342, and 69.50.345 for the purpose of marijuana product traceability. Disclosure to local, state, and federal officials is not considered public disclosure for purposes of this section;

(26) Financial and commercial information submitted to or obtained by the retirement board of any city that is responsible for the management of an employees' retirement system pursuant to the authority of chapter 35.39 RCW, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the retirement fund or to result in private loss to the providers of this information except that (a) the names and commitment amounts of the private funds in which retirement funds are invested and (b) the aggregate quarterly performance results for a retirement fund's portfolio of investments in such funds are subject to disclosure;

(27) Proprietary financial, commercial, operations, and technical and research information and data submitted to or obtained by the liquor and cannabis board in applications for marijuana research licenses under RCW 69.50.372, or in reports submitted by marijuana research licensees in accordance with rules adopted by the liquor and cannabis board under RCW 69.50.372;

(28) Trade secrets, technology, proprietary information, and financial considerations contained in any agreements or contracts, entered into by a licensed marijuana business under RCW 69.50.395, which may be submitted to or obtained by the state liquor and cannabis board; and

(29) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the Andy Hill cancer research endowment program in applications for, or delivery of, grants under chapter 43.348 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information; and

(30) Proprietary information filed with the department of health under chapter 69.48 RCW."

Correct the title.

Signed by Representatives Ormsby, Chair; Stokesbary, Ranking Minority Member; Robinson, 1st Vice Chair;

Bergquist, 2nd Vice Chair; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier; Chandler; Cody; Dolan; Dye; Fitzgibbon; Hansen; Hoff; Hudgins; Jinkins; Kraft; Macri; Mosbrucker; Pettigrew; Pollet; Ryu; Schmick; Senn; Springer; Stanford; Steele; Sullivan; Sutherland; Tarleton; Tharinger and Ybarra.

Referred to Committee on Appropriations.

March 28, 2019

SSB 5354 Prime Sponsor, Committee on Ways & Means: Concerning programs for highly capable students. Reported by Committee on Education

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 28A.185.020 and 2017 3rd sp.s. c 13 s 412 are each amended to read as follows:

~~((4))~~ The legislature finds that, for highly capable students, access to accelerated learning and enhanced instruction is access to a basic education. There are multiple definitions of highly capable, from intellectual to academic to artistic. The research literature strongly supports using multiple criteria to identify highly capable students, and therefore, the legislature does not intend to prescribe a single method. Instead, the legislature intends to ~~((allocate funding based on 5.0 percent of each school district's population and))~~ authorize school districts to identify through the use of multiple, objective criteria those students most highly capable and eligible to receive accelerated learning and enhanced instruction in the program offered by the district. ~~((District practices for identifying the most highly capable students must prioritize equitable identification of low-income students. Access to accelerated learning and enhanced instruction through the program for highly capable students does not constitute an individual entitlement for any particular student.~~

~~(2) Supplementary funds provided by the state for the program for highly capable students under RCW 28A.150.260 shall be categorical funding to provide services to highly capable students as determined by a school district under RCW 28A.185.030.)~~

NEW SECTION. **Sec. 2.** A new section is added to chapter 28A.185 RCW to read as follows:

(1) The legislature intends to allocate state funding for basic education programs for highly capable students based on five percent of each school district's student population.

(2) Funds provided by the state for the state basic education program for highly capable students under RCW

28A.150.260 shall be categorical funding to provide services to highly capable students as determined by a school district under RCW 28A.185.030. However, school districts must use a portion of the funds provided under this subsection to deliver professional development in accordance with section 9(2) of this act.

(3) Funds provided by the state for student transportation to and from school includes transportation to and from programs for highly capable students as defined in RCW 28A.160.160, and must be expended in accordance with chapter 28A.160 RCW.

(4) Subject to the availability of amounts appropriated for this specific purpose, each school district must conduct universal screenings in accordance with RCW 28A.185.030 to find students who need further assessment for potential gifted program placement.

Sec. 3. RCW 28A.185.030 and 2009 c 380 s 4 are each amended to read as follows:

~~((Local))~~ (1) School districts may establish and operate, either separately or jointly, programs for highly capable students. Such authority shall include the right to employ and pay special instructors and to operate such programs jointly with a public institution of higher education. ~~((Local))~~

(2) School districts ~~((which))~~ that establish and operate programs for highly capable students shall adopt identification procedures and provide educational opportunities as follows:

~~((4))~~ (a) In accordance with rules adopted by the superintendent of public instruction, school districts shall implement procedures for ~~((nomination))~~ referral, screening, assessment ~~((and))~~, selection, and placement of their most highly capable students. ~~((Nominations shall))~~

(i) Referrals must be based upon data from teachers, other staff, parents, students, and members of the community.

(ii) Beginning with the 2019-20 school year, school districts must screen all newly enrolled students, including transfer students, for further assessment to determine whether the student is eligible for potential placement in a program for highly capable students. The district must use a portion of the funds appropriated to provide the screenings within the school day and at the school the student attends.

(iii) Assessments ~~((shall))~~ for highly capable program services must be based upon a review of each student's capability as shown by multiple criteria intended to reveal, from a wide variety of sources and data, each student's unique needs and capabilities. Assessments must be conducted within the school day and at the school the student attends.

(iv) Selection and placements shall be made by a ~~((broadly based committee of professionals,))~~ multidisciplinary selection committee after consideration of the results of the multiple criteria assessment. The committee members must have at least five hours of course

work or professional development addressing the needs and characteristics of highly capable students. Students selected pursuant to procedures outlined in this section shall be provided, to the extent feasible, an educational opportunity that takes into account each student's unique needs and capabilities, and the limits of the resources and program options available to the district, including those options that can be developed or provided using funds allocated by the superintendent of public instruction for that specific purpose.

(b) In addition to the criteria listed in (a) of this subsection, district practices for identifying the most highly capable students must prioritize equitable identification of low-income students.

~~((2))~~ (3) When a student, including a student who is a child of a military family in transition, has been assessed or enrolled as highly capable by a sending school, the receiving school shall initially honor placement of the student into a like program.

(a) The receiving school shall determine whether the district's program is a like program when compared to the sending school's program; and

(b) The receiving school may conduct subsequent assessments to determine appropriate placement and continued enrollment in the program.

~~((3) Students selected pursuant to procedures outlined in this section shall be provided, to the extent feasible, an educational opportunity which takes into account each student's unique needs and capabilities and the limits of the resources and program options available to the district, including those options which can be developed or provided by using funds allocated by the superintendent of public instruction for that purpose.))~~

(4) Access to accelerated learning and enhanced instruction through a program for highly capable students does not constitute an individual entitlement for any particular student.

(5) For a student who is a child of a military family in transition, the definitions in Article II of RCW 28A.705.010 apply to subsection ~~((2))~~ (3) of this section.

(6) For the purpose of this section, "screening" means review of evidence of a student's academic aptitudes and proficiency such as the results of aptitude tests or assessments, intelligence quotient scores, grades, transcripts, and rigor of courses completed.

Sec. 4. RCW 28A.185.050 and 2002 c 234 s 1 are each amended to read as follows:

(1) In order to ensure that school districts are meeting the requirements of an approved program for highly capable students, the superintendent of public instruction shall monitor highly capable programs at least once every five years. Monitoring shall begin during the 2002-03 school year.

(2) Any program review and monitoring under this section may be conducted concurrently with other program reviews and monitoring conducted by the office of the superintendent of public instruction. In its review, the office shall monitor program components that include but need not be limited to the process used by the district to identify and reach out to highly capable students with diverse talents and from diverse backgrounds, assessment data and other indicators to determine how well the district is meeting the academic needs of highly capable students, and district expenditures used to enrich or expand opportunities for these students.

(3) Beginning June 30, 2003, and every five years thereafter, the office of the superintendent of public instruction shall submit a report to the education committees of the house of representatives and the senate that provides the following:

(a) A brief description of the various instructional programs offered to highly capable students; and

(b) Relevant data to the programs for highly capable students collected under RCW 28A.300.042.

(4) The superintendent of public instruction may adopt rules under chapter 34.05 RCW to implement this section.

Sec. 5. RCW 28A.160.160 and 2009 c 548 s 305 are each amended to read as follows:

For purposes of RCW 28A.160.150 through 28A.160.190, except where the context shall clearly indicate otherwise, the following definitions apply:

(1) "Eligible student" means any student served by the transportation program of a school district or compensated for individual transportation arrangements authorized by RCW 28A.160.030 whose route stop is outside the walk area for a student's school, except if the student to be transported is disabled under RCW 28A.155.020 and is either not ambulatory or not capable of protecting his or her own welfare while traveling to or from the school or agency where special education services are provided, in which case no mileage distance restriction applies.

(2) "Superintendent" means the superintendent of public instruction.

(3)(a) "To and from school" means the transportation of students for the following purposes:

~~((a))~~ (i) Transportation to and from route stops and schools;

~~((b))~~ (ii) Transportation to and from schools pursuant to an interdistrict agreement pursuant to RCW 28A.335.160;

~~((c))~~ (iii) Transportation of students between schools and learning centers for instruction specifically required by statute; ~~(and~~

~~(d))~~ (iv) Transportation to and from programs for students enrolled in programs for highly capable students. School districts may not require parents to provide transportation of highly capable students to and from programs for highly capable students; and

(v) Transportation of students with disabilities to and from schools and agencies for special education services.

(b) Academic extended day transportation for the instructional program of basic education under RCW 28A.150.220 shall be considered part of transportation of students "to and from school" for the purposes of this section. Transportation for field trips may not be considered part of transportation of students "to and from school" under this section.

(4) "Transportation services" for students living within the walk area includes the coordination of walk-to-school programs, the funding of crossing guards, and matching funds for local and state transportation projects intended to mitigate hazardous walking conditions. Priority for transportation services shall be given to students in grades kindergarten through five.

(5) As used in this section, "walk area" means that area around a school with an adequate roadway configuration to provide students access to school with a walking distance of less than one mile. Mileage must be measured along the shortest roadway or maintained public walkway where hazardous conditions do not exist. The hazardous conditions must be documented by a process established in rule by the superintendent of public instruction and must include roadway, environmental, and social conditions. Each elementary school shall identify walk routes within the walk area.

Sec. 6. RCW 28A.300.042 and 2016 c 72 s 501 are each amended to read as follows:

(1) ~~((Beginning with the 2017-18 school year, and using the phase in provided in subsection (2) of this section.))~~ The superintendent of public instruction must collect and school districts must submit all student-level data using the United States department of education 2007 race and ethnicity reporting guidelines, including the subracial and subethnic categories within those guidelines, with the following modifications:

(a) Further disaggregation of the Black category to differentiate students of African origin and students native to the United States with African ancestors;

(b) Further disaggregation of countries of origin for Asian students;

(c) Further disaggregation of the White category to include subethnic categories for Eastern European nationalities that have significant populations in Washington; and

(d) For students who report as multiracial, collection of their racial and ethnic combination of categories.

(2) Beginning with the 2017-18 school year, school districts shall collect student-level data as provided in subsection (1) of this section for all newly enrolled students, including transfer students. When the students enroll in a different school within the district, school districts shall resurvey the newly enrolled students for whom subracial and subethnic categories were not previously collected. School districts may resurvey other students.

(3) All student data-related reports required of the superintendent of public instruction in this title must be disaggregated by at least the following subgroups of students: White, Black, Hispanic, American Indian/Alaskan Native, Asian, Pacific Islander/Hawaiian Native, low income, highly capable, transitional bilingual, migrant, special education, and students covered by section 504 of the federal rehabilitation act of 1973, as amended (29 U.S.C. Sec. 794).

(4) All student data-related reports prepared by the superintendent of public instruction regarding student suspensions and expulsions as required under this title are subject to disaggregation by subgroups including:

- (a) Gender;
- (b) Foster care;
- (c) Homeless, if known;
- (d) School district;
- (e) School;
- (f) Grade level;
- (g) Behavior infraction code, including:
 - (i) Bullying;
 - (ii) Tobacco;
 - (iii) Alcohol;
 - (iv) Illicit drug;
 - (v) Fighting without major injury;
 - (vi) Violence without major injury;
 - (vii) Violence with major injury;
 - (viii) Possession of a weapon; and
 - (ix) Other behavior resulting from a short-term or long-term suspension, expulsion, or interim alternative education setting intervention;
- (h) Intervention applied, including:
 - (i) Short-term suspension;
 - (ii) Long-term suspension;
 - (iii) Emergency expulsion;
 - (iv) Expulsion;
 - (v) Interim alternative education settings;
 - (vi) No intervention applied; and

(vii) Other intervention applied that is not described in this subsection (4)(h);

(i) Number of days a student is suspended or expelled, to be counted in half or full days; and

(j) Any other categories added at a future date by the data governance group.

(5) All student data-related reports required of the superintendent of public instruction regarding student suspensions and expulsions as required in RCW 28A.300.046 are subject to cross-tabulation at a minimum by the following:

(a) School and district;

(b) Race, low income, highly capable, special education, transitional bilingual, migrant, foster care, homeless, students covered by section 504 of the federal rehabilitation act of 1973, as amended (29 U.S.C. Sec. 794), and categories to be added in the future;

(c) Behavior infraction code; and

(d) Intervention applied.

(6) The K-12 data governance group shall develop the data protocols and guidance for school districts in the collection of data as required under this section, and the office of the superintendent of public instruction shall modify the statewide student data system as needed. The office of the superintendent of public instruction shall also incorporate training for school staff on best practices for collection of data ~~((on student race and ethnicity))~~ under this section in other training or professional development related to data provided by the office.

(7) By December 1, 2021, the superintendent of public instruction must submit a report to the legislature that includes a comparison of the race, ethnicity, and low-income status of highly capable students compared to the same demographic groups in the general student population of each school district. If the comparison reveals a disproportionate rate of participation in highly capable programs, the report must include recommendations to the legislature on how to adjust participation to better align with general student demographics.

Sec. 7. RCW 28A.300.770 and 2018 c 266 s 105 are each amended to read as follows:

(1) The superintendent of public instruction must disseminate guidance on referral, screening, assessment, selection, and placement best practices for programs for highly capable students. The guidance must be regularly updated and aligned with evidence-based practices.

(2) The superintendent of public instruction must require school districts to have identification procedures for their highly capable programs that are clearly stated and implemented by school districts using the following criteria:

(a) Districts must use multiple objective criteria to identify students who are ~~((among))~~ the most highly capable. Multiple pathways for qualifications must be available and

no single criterion may disqualify a student from identification;

(b) Highly capable selection decisions must ~~((be based on consideration of criteria benchmarked on))~~ consider the use of local norms, but local norms may not be used as a more restrictive criteria than national norms at the same percentile;

(c) Subjective measures such as teacher recommendations or report card grades may not be used to screen out a student from assessment. These data points may be used alongside other criteria during selection to support identification, but may not be used to disqualify a student from being identified; and

(d) To the extent practicable, screening and assessments must be given in the native language of the student. If native language screening and assessments are not available, a nonverbal screening and assessment must be used.

~~((2) The superintendent of public instruction must disseminate guidance on referral, screening, assessment, selection, and placement best practices for highly capable programs. The guidance must be regularly updated and aligned with evidence-based practices.))~~

NEW SECTION. Sec. 8. A new section is added to chapter 28A.300 RCW to read as follows:

Subject to the availability of amounts appropriated for this specific purpose, the superintendent of public instruction shall designate professional staff for the following purposes:

(1) Providing technical assistance and guidance to school districts regarding school district programs for highly capable students; and

(2) Collecting and analyzing data related to school district programs for highly capable students used in the report required under RCW 28A.185.050.

NEW SECTION. Sec. 9. A new section is added to chapter 28A.415 RCW to read as follows:

(1) School districts must use a portion of the funds provided under RCW 28A.150.260 to provide a minimum of two hours of professional development every two years for principals and counselors regarding recognition of students who may qualify for programs for highly capable students, why highly capable students need special services, and the best practices for providing these services. School districts must ensure that the principals and counselors attend this mandated training.

(2)(a) School districts may use a portion of the funds provided under RCW 28A.150.260 to provide additional professional development.

(b) The professional development may include all certificated and classified instructional staff, principals, counselors, and other school and school district staff.

(c) For teachers teaching students in a general education classroom who are also admitted to a program for highly capable students, the professional development must be job-embedded as defined in RCW 28A.415.434.

Sec. 10. RCW 28B.10.032 and 1987 c 525 s 233 are each amended to read as follows:

(1) The state's public and private institutions of higher education offering teacher preparation programs and school districts are encouraged to explore ways to facilitate faculty exchanges, and other cooperative arrangements, to generate increased awareness and understanding by higher education faculty of the common school teaching experience and increased awareness and understanding by common school faculty of the teacher preparation programs.

(2) Teacher preparation programs must include information on recognizing students who may qualify for programs for highly capable students, why highly capable students need special services, and the best practices for providing these services."

Correct the title.

Signed by Representatives Santos, Chair; Dolan, Vice Chair; Paul, Vice Chair; Steele, Ranking Minority Member; McCaslin, Assistant Ranking Minority Member; Volz, Assistant Ranking Minority Member; Bergquist; Caldier; Callan; Corry; Kilduff; Kraft; Ortiz-Self; Rude; Stonier; Thai and Valdez.

Referred to Committee on Appropriations.

April 8, 2019

E2SSB 5356 Prime Sponsor, Committee on Ways & Means: Establishing the Washington state LGBTQ commission. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass. Signed by Representatives Ormsby, Chair; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; Rude, Assistant Ranking Minority Member; Cody; Dolan; Fitzgibbon; Hansen; Hudgins; Jinkins; Macri; Pettigrew; Pollet; Ryu; Senn; Springer; Stanford; Steele; Sullivan; Tarleton and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Caldier; Chandler; Dye; Hoff; Kraft; Mosbrucker; Schmick; Sutherland and Ybarra.

Referred to Committee on Appropriations.

March 27, 2019

SSB 5385 Prime Sponsor, Committee on Health & Long Term Care: Concerning telemedicine

payment parity. Reported by Committee on Health Care & Wellness

MAJORITY recommendation: Do pass. Signed by Representatives Cody, Chair; Macri, Vice Chair; Schmick, Ranking Minority Member; Chambers; Davis; DeBolt; Harris; Jinkins; Riccelli; Robinson; Stonier; Thai and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representative Caldier, Assistant Ranking Minority Member.

Referred to Committee on Appropriations.

March 27, 2019

SSB 5405 Prime Sponsor, Committee on Health & Long Term Care: Concerning nondiscrimination in access to organ transplants. Reported by Committee on Health Care & Wellness

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. FINDINGS. (1) The legislature finds that a mental or physical disability does not diminish a person's right to health care including organ transplantation.

(2) The legislature finds that the Americans with disabilities act of 1990 prohibits discrimination against persons with disabilities, yet many individuals with disabilities still experience discrimination in accessing critical health care services.

(3) The legislature finds that although organ transplant centers must consider medical and psychosocial criteria when determining if a patient is suitable to receive an organ transplant, transplant centers that participate in medicare, medicaid, and other federal funding programs are required to use patient selection criteria that result in a fair and nondiscriminatory distribution of organs.

(4) The legislature finds that Washington residents in need of organ transplants are entitled to assurances that they will not encounter discrimination on the basis of a disability.

NEW SECTION. Sec. 2. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Anatomical gift" has the same meaning as provided in RCW 68.64.010.

(2) "Auxiliary aids and services" include, but are not limited to:

(a) Qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(b) Qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(c) Provision of information in a format that is accessible for individuals with cognitive, neurological, developmental, and/or intellectual disabilities;

(d) Provision of supported decision-making services; and

(e) Acquisition or modification of equipment or devices.

(3) "Covered entity" means:

(a) Any licensed provider of health care services, including licensed health care practitioners, hospitals, nursing facilities, laboratories, intermediate care facilities, psychiatric residential treatment facilities, institutions for individuals with intellectual or developmental disabilities, and prison health centers; or

(b) Any entity responsible for matching anatomical gift donors to potential recipients.

(4) "Disability" has the same meaning as provided in the Americans with disabilities act of 1990, as amended by the Americans with disabilities act amendments act of 2008, 42 U.S.C. Sec. 12102.

(5) "Qualified individual" means an individual who, with or without the support networks available to them, provision of auxiliary aids and services, and/or reasonable modifications to policies or practices, meets the essential eligibility requirements for the receipt of an anatomical gift.

(6) "Reasonable modifications to policies or practices" include, but are not limited to:

(a) Communication with individuals responsible for supporting an individual with postsurgical and posttransplantation care, including medication; and

(b) Consideration of support networks available to the individual, including family, friends, and home and community-based services, including home and community-based services funded through medicaid, medicare, another health plan in which the individual is enrolled, or any program or source of funding available to the individual, in determining whether the individual is able to comply with posttransplant medical requirements.

(7) "Supported decision making" means the use of a support person to assist an individual in making medical decisions, communicate information to the individual, or ascertain an individual's wishes. "Supported decision making" may include:

(a) The inclusion of the individual's attorney-in-fact, health care proxy, or any person of the individual's choice in communications about the individual's medical care;

(b) Permitting the individual to designate a person of their choice for the purposes of supporting that individual in communicating, processing information, or making medical decisions;

(c) Providing auxiliary aids and services to facilitate the individual's ability to communicate and process health-related information, including use of assistive communication technology;

(d) Providing information to persons designated by the individual, consistent with the provisions of the health insurance portability and accountability act of 1996, 42 U.S.C. Sec. 1301 et seq., and other applicable laws and regulations governing disclosure of health information;

(e) Providing health information in a format that is readily understandable by the individual; and

(f) Working with a court-appointed guardian or other individual responsible for making medical decisions on behalf of the individual, to ensure that the individual is included in decisions involving his or her own health care and that medical decisions are in accordance with the individual's own expressed interests.

NEW SECTION. Sec. 3. PROHIBITION OF DISCRIMINATION. (1) A covered entity may not, solely on the basis of a qualified individual's mental or physical disability:

(a) Deem an individual ineligible to receive an anatomical gift or organ transplant;

(b) Deny medical or related organ transplantation services, including evaluation, surgery, counseling, and postoperative treatment and care;

(c) Refuse to refer the individual to a transplant center or other related specialist for the purpose of evaluation or receipt of an organ transplant;

(d) Refuse to place an individual on an organ transplant waiting list, or placement of the individual at a lower-priority position on the list than the position at which he or she would have been placed if not for his or her disability; or

(e) Decline insurance coverage for any procedure associated with the receipt of the anatomical gift, including posttransplantation care.

(2) Notwithstanding subsection (1) of this section, a covered entity may take an individual's disability into account when making treatment and/or coverage recommendations or decisions, solely to the extent that the physical or mental disability has been found by a physician, following an individualized evaluation of the potential recipient, to be medically significant to the provision of the anatomical gift. The provisions of this section may not be deemed to require referrals or recommendations for, or the performance of, medically inappropriate organ transplants.

(3) If an individual has the necessary support system to provide reasonable assurance that she or he will comply with posttransplant medical requirements, an individual's

inability to independently comply with those requirements may not be deemed to be medically significant for the purposes of subsection (2) of this section.

(4) A covered entity must make reasonable modifications to policies, practices, or procedures, when such modifications are necessary to make services such as transplantation-related counseling, information, coverage, or treatment available to qualified individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such services.

(5) A covered entity must take such steps as may be necessary to ensure that no qualified individual with a disability is denied services such as transplantation-related counseling, information, coverage, or treatment because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the services being offered or would result in an undue burden.

(6) A covered entity must otherwise comply with the requirements of Titles II and III of the Americans with disabilities act of 1990 and the Americans with disabilities act amendments act of 2008.

(7) The provisions of this section apply to each part of the organ transplant process.

NEW SECTION. Sec. 4. ENFORCEMENT. (1) Any individual who has been subjected to discrimination in violation of this chapter may initiate a civil action in a court of competent jurisdiction to enjoin further violations and recover the cost of the suit including reasonable attorneys' fees.

(2) The court must accord priority on its calendar and expeditiously proceed with an action brought under this chapter.

(3) Nothing in this section is intended to limit or replace available remedies under the Americans with disabilities act of 1990 and the Americans with disabilities act amendments act of 2008 or any other applicable law.

NEW SECTION. Sec. 5. Sections 1 through 4 of this act constitute a new chapter in Title 68 RCW."

Correct the title.

Signed by Representatives Cody, Chair; Macri, Vice Chair; Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Chambers; Davis; DeBolt; Harris; Jinkins; Riccelli; Robinson; Stonier; Thai and Tharinger.

Referred to Committee on Rules for second reading.

March 27, 2019

ESSB 5410 Prime Sponsor, Committee on Higher Education & Workforce Development:

Concerning a systemwide credit policy regarding advanced placement, international baccalaureate, and Cambridge international exams. Reported by Committee on College & Workforce Development

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The legislature finds that advanced placement, international baccalaureate, and Cambridge international coursework prepares students for postsecondary success and provides opportunities for them to earn college credit or secure placement in advanced courses.

The legislature feels strongly that students who have earned minimum scores of three on advanced placement exams, four on standard-level and higher-level international baccalaureate exams, or scores of E or higher on A and AS level Cambridge international exams deserve to receive undergraduate college credit, including elective credit and, where appropriate, course equivalent credit, for their work.

The legislature finds it necessary to develop a systemwide credit policy that allows those students to easily understand in advance whether institutions of higher education will award them credit, as well as which type of credit students will receive and the rationale for the institution of higher education's determination.

The legislature further encourages institutions of higher education to establish a policy favoring the award of course equivalent credit for the successful completion of standardized and commonly required courses.

Sec. 2. RCW 28B.10.054 and 2017 c 179 s 2 are each amended to read as follows:

(1) The institutions of higher education must establish a coordinated, evidence-based policy for granting as many undergraduate college credits, as possible and appropriate, to students who have earned minimum scores of three on ~~((AP))~~ advanced placement exams ~~((as possible and appropriate))~~, four on standard-level and higher-level international baccalaureate exams, or scores of E or higher on A and AS level Cambridge international exams.

(2) Each institution of higher education must create a process for retroactively awarding international baccalaureate exam undergraduate college credits under the terms of this section to students who first enrolled in the institution of higher education in the 2018-19 academic year.

(3) Credit ~~((policy))~~ policies regarding all ~~((AP))~~ advanced placement and international baccalaureate exams must be posted on campus web sites effective for the ~~((2017))~~ 2019 fall academic term. Credit policies regarding all Cambridge international exams must be posted on

campus web sites effective for the 2020 fall academic term. If an institution of higher education is unable to award a general education course equivalency, the student may request in writing an evidence-based reason as to why general education course equivalency cannot be granted. Institutions of higher education must maintain web sites regarding their advanced placement, international baccalaureate, and Cambridge international policies in a publicly accessible way. The institutions of higher education must conduct biennial reviews of their ~~((AP))~~ advanced placement, international baccalaureate, and Cambridge international credit ~~((policy))~~ policies and report noncompliance to the appropriate committees of the legislature by November 1st each ~~((year))~~ biennium beginning November 1, 2019.

(4) The institutions of higher education must provide an update to the joint legislative audit and review committee on their credit awarding policies by December 31, 2019.

(5) For the purposes of this section, "general education course equivalency" means credit that fulfills general education or major requirements and is not awarded as elective credit.

NEW SECTION. Sec. 3. RCW 28B.10.051 (International baccalaureate and Cambridge international exams credit policies) and 2018 c 124 s 2 are each repealed."

Correct the title.

Signed by Representatives Hansen, Chair; Entenman, Vice Chair; Leavitt, Vice Chair; Van Werven, Ranking Minority Member; Gildon, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Bergquist; Kraft; Mead; Paul; Pollet; Ramos; Rude; Sells; Slatter; Sutherland and Young.

Referred to Committee on Rules for second reading.

April 8, 2019

SB 5415 Prime Sponsor, Senator McCoy: Creating the Washington Indian health improvement act. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Health Care & Wellness.

Strike everything after the enacting clause and insert the following:

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

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

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

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

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

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

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

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

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

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

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

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

(2) The legislature, therefore, intends to:

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

(i) Recognize the United States' special trust responsibility to provide quality health care and allied health

services to American Indians and Alaska Natives, including those individuals who are residents of this state; and

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

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

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

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

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

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

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

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

NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advisory council" means the governor's Indian health advisory council established in section 3 of this act.

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

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

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

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

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

(7) "Community health aide" means a tribal community health provider certified by a community health aide program of the Indian health service or one or more tribes or tribal organizations consistent with the provisions of 25 U.S.C. Sec. 1616l, who can perform a wide range of duties within the provider's scope of certified practice in health programs of a tribe, tribal organization, Indian health

service facility, or urban Indian organization to improve access to culturally appropriate, quality care for American Indians and Alaska Natives and their families and communities, including but not limited to community health aides, community health practitioners, behavioral health aides, behavioral health practitioners, dental health aides, and dental health aide therapists.

(8) "Community health aide program" means a community health aide certification board for the state consistent with 25 U.S.C. Sec. 1616l and the training programs and certification requirements established thereunder.

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

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

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

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

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

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

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

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

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

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

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

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

(a) The following voting members:

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

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

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

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

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

(b) The following nonvoting members:

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

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

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

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

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

(3) The advisory council has the responsibility to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The advisory plan shall include the following:

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

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

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

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

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

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

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

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

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

(viii) Expansion of traditional healing services;

(ix) Development of a community health aide program, including a community health aide certification

board for the state consistent with 25 U.S.C. Sec. 1616l, and support for community health aide services;

(x) Health information technology capability within tribes and urban Indian organizations to assure the technological capacity to: (A) Produce sound evidence for Indian health care provider best practices; (B) effectively coordinate care between Indian health care providers and non-Indian health care providers; (C) provide interoperability with state claims and reportable data systems, such as for immunizations and reportable conditions; and (D) support patient-centered medical home models, including sufficient resources to purchase and implement certified electronic health record systems, such as hardware, software, training, and staffing;

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

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

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

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

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

(2) Beginning November 1, 2019, the new state savings as defined in section 2 of this act, less the state's administrative costs as agreed upon by the state and the reinvestment committee, shall be deposited into the reinvestment account. With advice from the advisory council, the authority shall develop a report and methodology to identify and track the new state savings. Each fall, to assure alignment with existing budget processes, the methodology selected shall involve the same forecasting procedures that inform the authority's medical assistance and behavioral health appropriations to

prospectively identify new state savings each fiscal year, as defined in section 2 of this act.

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

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

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

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

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

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

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

(b) The following accounts and funds must receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The 24/7 sobriety account, the Washington promise scholarship account, the Gina Grant Bull memorial legislative page scholarship account, the Washington advanced college tuition payment program account, the Washington college savings program account, the accessible communities account, the Washington achieving a better life experience program account, the community and technical college innovation account, the agricultural local fund, the American Indian scholarship endowment fund, the foster care scholarship endowment fund, the foster care endowed scholarship trust fund, the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the county enhanced 911 excise tax account, the toll collection account, the developmental disabilities endowment trust fund, the energy account, the fair fund, the family and medical leave insurance account, the fish and wildlife federal lands

revolving account, the natural resources federal lands revolving account, the food animal veterinarian conditional scholarship account, the forest health revolving account, the fruit and vegetable inspection account, the future teachers conditional scholarship account, the game farm alternative account, the GET ready for math and science scholarship account, the Washington global health technologies and product development account, the grain inspection revolving fund, the Washington history day account, the industrial insurance rainy day fund, the juvenile accountability incentive account, the law enforcement officers' and firefighters' plan 2 expense fund, the local tourism promotion account, the low-income home rehabilitation revolving loan program account, the multiagency permitting team account, the northeast Washington wolf-livestock management account, the pilotage account, the produce railcar pool account, the regional transportation investment district account, the rural rehabilitation account, the Washington sexual assault kit account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the children's trust fund, the Washington horse racing commission Washington bred owners' bonus fund and breeder awards account, the Washington horse racing commission class C purse fund account, the individual development account program account, the Washington horse racing commission operating account, the life sciences discovery fund, the Washington state heritage center account, the reduced cigarette ignition propensity account, the center for childhood deafness and hearing loss account, the school for the blind account, the Millersylvania park trust fund, the public employees' and retirees' insurance reserve fund, the school employees' benefits board insurance reserve fund, ~~((the))~~ the public employees' and retirees' insurance account, ~~((the))~~ the school employees' insurance account, ~~((and))~~ the radiation perpetual maintenance fund, and the Indian health improvement reinvestment account.

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

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

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

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

Correct the title.

Signed by Representatives Ormsby, Chair; Stokesbary, Ranking Minority Member; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier; Chandler; Cody; Dolan; Dye; Fitzgibbon; Hansen; Hoff; Hudgins; Jinkins; Kraft; Macri; Mosbrucker; Pettigrew; Pollet; Ryu; Schmick; Senn; Springer; Stanford; Steele; Sullivan; Sutherland; Tarleton; Tharinger and Ybarra.

Referred to Committee on Appropriations.

April 8, 2019

E2SSB 5432 Prime Sponsor, Committee on Ways & Means: Concerning fully implementing behavioral health integration for January 1, 2020, by removing behavioral health organizations from law; clarifying the roles and responsibilities among the health care authority, department of social and health services, and department of health, and the roles and responsibilities of behavioral health administrative services organizations and medicaid managed care organizations; and making technical corrections related to the behavioral health system. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Health Care & Wellness.

Strike everything after the enacting clause and insert the following:

"PART 1

Sec. 1001. RCW 71.24.011 and 1982 c 204 s 1 are each amended to read as follows:

This chapter may be known and cited as the community ~~((mental))~~ behavioral health services act.

Sec. 1002. RCW 71.24.015 and 2018 c 201 s 4001 are each amended to read as follows:

It is the intent of the legislature to establish a community ~~((mental))~~ behavioral health ~~((program))~~ system which shall help people experiencing mental illness or a substance use disorder to retain a respected and productive position in the community. This will be accomplished through programs that focus on resilience and recovery, and practices that are evidence-based, research-based,

consensus-based, or, where these do not exist, promising or emerging best practices, which provide for:

(1) Access to ~~((mental))~~ behavioral health services for adults with mental illness and children with mental illness ~~((or)),~~ emotional disturbances ~~((who meet access to care standards which services)),~~ or substance use disorders, that recognize the special needs of underserved populations, including minorities, children, older adults, individuals with disabilities, and low-income persons. Access to mental health and substance use disorder services shall not be limited by a person's history of confinement in a state, federal, or local correctional facility. It is also the purpose of this chapter to promote the early identification of children with mental illness and to ensure that they receive the mental health care and treatment which is appropriate to their developmental level. This care should improve home, school, and community functioning, maintain children in a safe and nurturing home environment, and should enable treatment decisions to be made in response to clinical needs in accordance with sound professional judgment while also recognizing parents' rights to participate in treatment decisions for their children;

(2) The involvement of persons with mental illness or substance use disorder, their family members, and advocates in designing and implementing ~~((mental))~~ behavioral health services that reduce unnecessary hospitalization and incarceration and promote ~~((the))~~ recovery and employment ~~((of persons with mental illness)).~~ To improve the quality of services available and promote the rehabilitation, recovery, and reintegration of persons with mental illness or substance use disorder, consumer and advocate participation in ~~((mental))~~ behavioral health services is an integral part of the community ~~((mental))~~ behavioral health system and shall be supported;

(3) Accountability of efficient and effective services through state-of-the-art outcome and performance measures and statewide standards for monitoring client and system outcomes, performance, and reporting of client and system outcome information. These processes shall be designed so as to maximize the use of available resources for direct care of people with a mental illness and to assure uniform data collection across the state;

(4) Minimum service delivery standards;

(5) Priorities for the use of available resources for the care of individuals with mental illness or substance use disorder consistent with the priorities defined in the statute;

(6) Coordination of services within the department of social and health services, ~~((including those divisions within the department of social and health services that provide services to children, between))~~ the authority, the department, the department of ((social and health services)) children, youth, and families, and the office of the superintendent of public instruction, and among state mental hospitals, tribes, residential treatment facilities, county authorities, behavioral health administrative services organizations, managed care organizations, community ~~((mental))~~ behavioral health services, and other support services, which shall to the maximum extent feasible also include the families of individuals with mental illness or

substance use disorder, and other service providers, including Indian health care providers; and

(7) Coordination of services aimed at reducing duplication in service delivery and promoting complementary services among all entities that provide ~~((mental))~~ behavioral health services to adults and children.

It is the policy of the state to encourage the provision of a full range of treatment and rehabilitation services in the state for mental disorders, or substance use disorders, including services operated by consumers and advocates. The legislature intends to encourage the development of regional ~~((mental))~~ behavioral health services with adequate local flexibility to assure eligible people in need of care access to the least-restrictive treatment alternative appropriate to their needs, and the availability of treatment components to assure continuity of care. ~~((To this end, counties must enter into joint operating agreements with other counties to form regional systems of care that are consistent with the regional service areas established under RCW 74.09.870. Regional systems of care, whether operated by a county, group of counties, or another entity shall integrate planning, administration, and service delivery duties under chapter 71.05 RCW and this chapter to consolidate administration, reduce administrative layering, and reduce administrative costs.))~~ The legislature hereby finds and declares that sound fiscal management requires vigilance to ensure that funds appropriated by the legislature for the provision of needed community ~~((mental))~~ behavioral health ~~((programs and))~~ system services are ultimately expended solely for the purpose for which they were appropriated, and not for any other purpose.

It is further the intent of the legislature to integrate the provision of services to provide continuity of care through all phases of treatment. To this end, the legislature intends to promote active engagement with persons with mental illness and collaboration between families and service providers.

Sec. 1003. RCW 71.24.016 and 2014 c 225 s 7 are each amended to read as follows:

(1) The legislature intends that eastern and western state hospitals shall operate as clinical centers for handling the most complicated long-term care needs of patients with a primary diagnosis of mental disorder. It is further the intent of the legislature that the community ~~((mental))~~ behavioral health service delivery system focus on maintaining individuals with mental illness in the community. The program shall be evaluated and managed through a limited number of outcome and performance measures, as provided in RCW 43.20A.895 (as recodified by this act), 70.320.020, and 71.36.025.

(2) The legislature intends to address the needs of people with mental disorders with a targeted, coordinated, and comprehensive set of evidence-based practices that are effective in serving individuals in their community and will reduce the need for placements in state mental hospitals. The legislature further intends to explicitly hold behavioral health administrative services organizations, within

available resources, and managed care organizations accountable for serving people with mental disorders within the boundaries of their regional service area ~~((and for not exceeding their allocation of state hospital beds)).~~

(3) The authority shall establish a work group to determine: (a) How to appropriately manage access to adult long-term inpatient involuntary care and the children's long-term inpatient program in the community and at eastern and western state hospitals, until such a time as the risk for long-term involuntary inpatient care may be fully integrated into managed care organization contracts, and provide advice to guide the integration process; and (b) how to expand bidirectional integration through increased support for co-occurring disorder services, including recommendations related to purchasing and rates. The work group shall include representation from the department of social and health services, the department of health, behavioral health administrative services organizations, at least two managed care organizations, the Washington state association of counties, community behavioral health providers, including providers with experience providing co-occurring disorder services, and the Washington state hospital association. Managed care representation on the work group must include at least one member with financial expertise and at least one member with clinical expertise. The managed care organizations on the work group shall represent the entire managed care sector and shall collaborate with the nonrepresented managed care organizations. The work group shall provide recommendations to the office of financial management and appropriate committees of the legislature by December 15, 2019.

Sec. 1004. RCW 71.24.025 and 2018 c 201 s 4002 are each amended to read as follows:

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

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

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

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

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

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

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

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

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

(6) "Behavioral health administrative services organization" means ~~((any county authority or group of county authorities or other entity recognized by the director in contract in a defined region))~~ an entity contracted with the authority to administer behavioral health services and programs under section 1046 of this act, including crisis services and administration of chapter 71.05 RCW, the involuntary treatment act, for all individuals in a defined regional service area.

(7) "Community behavioral health program" means all expenditures, services, activities, or programs, including reasonable administration and overhead, designed and conducted to prevent or treat ~~((chemical dependency and))~~ substance use disorder, mental illness, or both in the community behavioral health system.

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

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

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

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

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

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

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

(12) "Community ~~((mental))~~ behavioral health service delivery system" means public, private, or tribal

agencies that provide services specifically to persons with mental disorders, substance use disorders, or both, as defined under RCW 71.05.020 and receive funding from public sources.

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

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

(15) "County authority" means the board of county commissioners, county council, or county executive having authority to establish a ~~((community mental))~~ behavioral health ((program)) administrative services organization, or two or more of the county authorities specified in this subsection which have entered into an agreement to ~~((provide a community mental))~~ establish a behavioral health ((program)) administrative services organization.

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

(17) "Designated crisis responder" ~~((means a mental health professional designated by the county or other authority authorized in rule to perform the duties specified in this chapter))~~ has the same meaning as in RCW 71.05.020.

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

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

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

(21) "Emerging best practice" or "promising practice" means a program or practice that, based on

statistical analyses or a well established theory of change, shows potential for meeting the evidence-based or research-based criteria, which may include the use of a program that is evidence-based for outcomes other than those listed in subsection (22) of this section.

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

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

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

~~((24))~~ (25) "Licensed or certified ~~((service provider))~~ behavioral health agency" means:

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

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

(c) An entity with a tribal attestation that it meets state minimum standards ~~((or persons licensed under chapter 18.57, 18.57A, 18.71, 18.71A, 18.83, or 18.79 RCW, as it applies to registered nurses and advanced registered nurse practitioners))~~ for a licensed or certified behavioral health agency.

~~((25))~~ (26) "Long-term inpatient care" means inpatient services for persons committed for, or voluntarily receiving intensive treatment for, periods of ninety days or greater under chapter 71.05 RCW. "Long-term inpatient care" as used in this chapter does not include: (a) Services for individuals committed under chapter 71.05 RCW who are receiving services pursuant to a conditional release or a court-ordered less restrictive alternative to detention; or (b) services for individuals voluntarily receiving less restrictive alternative treatment on the grounds of the state hospital.

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

(27) "Managed care organization" means an organization, having a certificate of authority or certificate of registration from the office of the insurance commissioner, that contracts with the authority under a

comprehensive risk contract to provide prepaid health care services to enrollees under the authority's managed care programs under chapter 74.09 RCW.

~~(28)~~ Mental health "treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department of social and health services or the authority, by behavioral health administrative services organizations and their staffs, by managed care organizations and their staffs, or by treatment facilities. "Treatment records" do not include notes or records maintained for personal use by a person providing treatment services for the ~~((department of social and health services, behavioral health organizations))~~ entities listed in this subsection, or a treatment facility if the notes or records are not available to others.

~~((28))~~ (29) "Mentally ill persons," "persons who are mentally ill," and "the mentally ill" mean persons and conditions defined in subsections (1), (10), (36), and (37) of this section.

~~((29))~~ (30) "Recovery" means the process in which people are able to live, work, learn, and participate fully in their communities.

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

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

(32) "Residential services" means a complete range of residences and supports authorized by resource management services and which may involve a facility, a distinct part thereof, or services which support community living, for persons who are acutely mentally ill, adults who are chronically mentally ill, children who are severely emotionally disturbed, or adults who are seriously disturbed and determined by the behavioral health administrative services organization or managed care organization to be at risk of becoming acutely or chronically mentally ill. The services shall include at least evaluation and treatment services as defined in chapter 71.05 RCW, acute crisis respite care, long-term adaptive and rehabilitative care, and supervised and supported living services, and shall also include any residential services developed to service persons who are mentally ill in nursing homes, residential treatment facilities, assisted living facilities, and adult family homes, and may include outpatient services provided as an element in a package of services in a supported housing model. Residential services for children in out-of-home placements related to their mental disorder shall not include the costs of

food and shelter, except for children's long-term residential facilities existing prior to January 1, 1991.

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

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

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

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

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

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

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

(d) Exhibits suicidal preoccupation or attempts; or

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

(37) "Severely emotionally disturbed child" or "child who is severely emotionally disturbed" means a child who has been determined by the behavioral health administrative services organization or managed care organization, if applicable, to be experiencing a mental disorder as defined in chapter 71.34 RCW, including those mental disorders that result in a behavioral or conduct disorder, that is clearly interfering with the child's

functioning in family or school or with peers and who meets at least one of the following criteria:

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

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

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

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

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

(ii) Changes in custodial adult;

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

(iv) Subject to repeated physical abuse or neglect;

(v) Drug or alcohol abuse; or

(vi) Homelessness.

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

(a) The authority for:

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

(ii) Community support services and resource management services;

(b) The department of health for:

(i) Licensed or certified (~~service providers~~) behavioral health agencies for the (~~provision of~~) purpose of providing mental health (~~and~~) or substance use disorder programs and services, or both; (and)

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

(iii) Residential services.

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

(40) "~~(Tribal authority)~~ Tribe," for the purposes of this section (~~and RCW 71.24.300 only~~), means (~~The~~) a federally recognized Indian tribe (~~s and the major Indian organizations recognized by the director insofar as these organizations do not have a financial relationship with any~~

behavioral health organization that would present a conflict of interest)).

(41) "Behavioral health provider" means a person licensed under chapter 18.57, 18.57A, 18.71, 18.71A, 18.83, 18.205, 18.225, or 18.79 RCW, as it applies to registered nurses and advanced registered nurse practitioners.

Sec. 1005. RCW 71.24.030 and 2018 c 201 s 4003 are each amended to read as follows:

The director is authorized to make grants and/or purchase services from counties, combinations of counties, or other entities, to establish and operate community ~~((mental))~~ behavioral health programs.

Sec. 1006. RCW 71.24.035 and 2018 c 201 s 4004 are each amended to read as follows:

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

(2) The director shall provide for public, client, tribal, and licensed or certified ~~((service provider))~~ behavioral health agency participation in developing the state behavioral health program, developing related contracts ~~((with behavioral health organizations)),~~ and any waiver request to the federal government under medicaid.

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

~~(4) ((The director shall be designated as the behavioral health organization if the behavioral health organization fails to meet state minimum standards or refuses to exercise responsibilities under its contract or RCW 71.24.045, until such time as a new behavioral health organization is designated.))~~ The authority shall be designated as the behavioral health administrative services organization for a regional service area if a behavioral health administrative services organization fails to meet the authority's contracting requirements or refuses to exercise the responsibilities under its contract or state law, until such time as a new behavioral health administrative services organization is designated.

(5) The director shall:

~~(a) ((Develop a biennial state behavioral health program that incorporates regional biennial needs assessments and regional mental health service plans and state services for adults and children with mental disorders or substance use disorders or both;~~

~~(b))~~ Assure that any behavioral health administrative services organization, managed care organization, or ((county)) community behavioral health program provides medically necessary services to medicaid recipients consistent with the state's medicaid state plan or

federal waiver authorities, and nonmedicaid services consistent with priorities established by the authority;

~~((e) Develop and adopt rules establishing state minimum standards for the delivery of behavioral health services pursuant to RCW 71.24.037 including, but not limited to:~~

~~(i) Licensed or certified service providers. These rules shall permit a county operated behavioral health program to be licensed as a service provider subject to compliance with applicable statutes and rules.~~

~~(ii) Inpatient services, an adequate network of evaluation and treatment services and facilities under chapter 71.05 RCW to ensure access to treatment, resource management services, and community support services;~~

~~(d) Assure that the special needs of persons who are minorities, elderly, disabled, children, low income, and parents who are respondents in dependency cases are met within the priorities established in this section;~~

~~(e) Establish a standard contract or contracts, consistent with state minimum standards which shall be used in contracting with behavioral health organizations. The standard contract shall include a maximum fund balance, which shall be consistent with that required by federal regulations or waiver stipulations;~~

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

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

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

(e) Establish, to the extent possible, a standardized auditing procedure which is designed to assure compliance with contractual agreements authorized by this chapter and minimizes paperwork requirements ((of behavioral health organizations and licensed or certified service providers)). The audit procedure shall focus on the outcomes of service as provided in RCW 43.20A.895 (as recodified by this act), 70.320.020, and 71.36.025;

~~((h))~~ (f) Develop and maintain an information system to be used by the state and behavioral health administrative services organizations and managed care organizations that includes a tracking method which allows the authority ((and behavioral health organizations)) to identify behavioral health clients' participation in any behavioral health service or public program on an immediate basis. The information system shall not include individual patient's case history files. Confidentiality of client

information and records shall be maintained as provided in this chapter and chapter 70.02 RCW;

~~((t)) Periodically monitor the compliance of behavioral health organizations and their network of licensed or certified service providers for compliance with the contract between the authority, the behavioral health organization, and federal and state rules at reasonable times and in a reasonable manner;~~

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

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

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

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

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

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

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

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

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

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

(b) To incentivize improved performance with respect to the client outcomes established in RCW 43.20A.895 (as recodified by this act), 70.320.020, and 71.36.025, integration of behavioral health and medical services at the clinical level, and improved care coordination for individuals with complex care needs.

(7) Each behavioral health administrative services organization, managed care organization, and licensed or certified ~~((service provider))~~ behavioral health agency shall

file with the secretary of the department of health or the director, on request, such data, statistics, schedules, and information as the secretary of the department of health or the director reasonably requires. A behavioral health administrative services organization, managed care organization, or licensed or certified ~~((service provider))~~ behavioral health agency which, without good cause, fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent reports thereof, may be subject to the ~~((behavioral health organization))~~ contractual remedies in RCW 74.09.871 or may have its service provider certification or license revoked or suspended.

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

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

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

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

~~((12) The director shall assume all duties assigned to the nonparticipating behavioral health organizations under chapters 71.05 and 71.34 RCW and this chapter. Such responsibilities shall include those which would have been assigned to the nonparticipating counties in regions where there are not participating behavioral health organizations.~~

The behavioral health organizations, or the director's assumption of all responsibilities under chapters 71.05 and 71.34 RCW and this chapter, shall be included in all state and federal plans affecting the state behavioral health program including at least those required by this chapter, the medicaid program, and P.L. 99-660. Nothing in these plans shall be inconsistent with the intent and requirements of this chapter.

(13) The director shall:

~~(a) Disburse funds for the behavioral health organizations within sixty days of approval of the biennial contract. The authority must either approve or reject the biennial contract within sixty days of receipt.~~

~~(b) Enter into biennial contracts with behavioral health organizations. The contracts shall be consistent with available resources. No contract shall be approved that does not include progress toward meeting the goals of this chapter by taking responsibility for: (i) Short term commitments; (ii) residential care; and (iii) emergency response systems.~~

~~(c) Notify behavioral health organizations of their allocation of available resources at least sixty days prior to the start of a new biennial contract period.~~

~~(d) Deny all or part of the funding allocations to behavioral health organizations based solely upon formal findings of noncompliance with the terms of the behavioral health organization's contract with the authority. Behavioral health organizations disputing the decision of the director to withhold funding allocations are limited to the remedies provided in the authority's contracts with the behavioral health organizations.~~

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

~~((15)) (13) The authority may:~~

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

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

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

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

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

Sec. 1007. RCW 71.24.037 and 2018 c 201 s 4005 are each amended to read as follows:

(1) ~~The secretary shall ((by rule establish state minimum standards for licensed or certified behavioral health service providers and services, whether those service providers and services are licensed or certified to provide solely mental health services, substance use disorder treatment services, or services to persons with co-occurring disorders))~~ license or certify any agency or facility that: (a) Submits payment of the fee established under RCW 43.70.110 and 43.70.250; (b) submits a complete application that demonstrates the ability to comply with requirements for operating and maintaining an agency or facility in statute or rule; and (c) successfully completes the preclosure inspection requirement.

(2) ~~The secretary shall establish by rule minimum standards for licensed or certified behavioral health ((service providers shall))~~ agencies that must, at a minimum, establish: (a) Qualifications for staff providing services directly to persons with mental disorders, substance use disorders, or both((s)); (b) the intended result of each service((s)); and (c) the rights and responsibilities of persons receiving behavioral health services pursuant to this chapter and chapter 71.05 RCW. The secretary shall provide for deeming of licensed or certified behavioral health ((service providers)) agencies as meeting state minimum standards as a result of accreditation by a recognized behavioral health accrediting body recognized and having a current agreement with the department.

~~(3) ((Minimum standards for community support services and resource management services shall include at least qualifications for resource management services, client tracking systems, and the transfer of patient information between behavioral health service providers.~~

~~(4) The department may suspend, revoke, limit, restrict, or modify an approval, or refuse to grant approval, for failure to meet the provisions of this chapter, or the standards adopted under this chapter. RCW 43.70.115 governs notice of a license or certification denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.))~~ The department shall review reports or other information alleging a failure to comply with this chapter or the standards and rules adopted under this chapter and may initiate investigations and enforcement actions based on those reports.

~~(4) The department shall conduct inspections of agencies and facilities, including reviews of records and documents required to be maintained under this chapter or rules adopted under this chapter.~~

~~(5) The department may suspend, revoke, limit, restrict, or modify an approval, or refuse to grant approval, for failure to meet the provisions of this chapter, or the standards adopted under this chapter. RCW 43.70.115 governs notice of a license or certification denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.~~

~~(6) No licensed or certified behavioral health service provider may advertise or represent itself as a licensed or~~

certified behavioral health service provider if approval has not been granted~~((7))~~ or has been denied, suspended, revoked, or canceled.

~~((6))~~ (7) Licensure or certification as a behavioral health service provider is effective for one calendar year from the date of issuance of the license or certification. The license or certification must specify the types of services provided by the behavioral health service provider that meet the standards adopted under this chapter. Renewal of a license or certification must be made in accordance with this section for initial approval and in accordance with the standards set forth in rules adopted by the secretary.

~~((7))~~ (8) Licensure or certification as a licensed or certified behavioral health service provider must specify the types of services provided that meet the standards adopted under this chapter. Renewal of a license or certification must be made in accordance with this section for initial approval and in accordance with the standards set forth in rules adopted by the secretary.

~~((8))~~ (9) Licensed or certified behavioral health service providers may not provide types of services for which the licensed or certified behavioral health service provider has not been certified. Licensed or certified behavioral health service providers may provide services for which approval has been sought and is pending, if approval for the services has not been previously revoked or denied.

~~((9))~~ (10) The department periodically shall inspect licensed or certified behavioral health service providers at reasonable times and in a reasonable manner.

~~((10))~~ (11) Upon petition of the department and after a hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the department authorizing him or her to enter and inspect at reasonable times, and examine the books and accounts of, any licensed or certified behavioral health service provider refusing to consent to inspection or examination by the department or which the department has reasonable cause to believe is operating in violation of this chapter.

~~((11))~~ (12) The department shall maintain and periodically publish a current list of licensed or certified behavioral health service providers.

~~((12))~~ (13) Each licensed or certified behavioral health service provider shall file with the department or the authority upon request, data, statistics, schedules, and information the department or the authority reasonably requires. A licensed or certified behavioral health service provider that without good cause fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent returns thereof, may have its license or certification revoked or suspended.

~~((13))~~ (14) The authority shall use the data provided in subsection ~~((12))~~ (13) of this section to evaluate each program that admits children to inpatient substance use disorder treatment upon application of their parents. The evaluation must be done at least once every twelve months. In addition, the authority shall randomly select and review the information on individual children who

are admitted on application of the child's parent for the purpose of determining whether the child was appropriately placed into substance use disorder treatment based on an objective evaluation of the child's condition and the outcome of the child's treatment.

~~((14))~~ (15) Any settlement agreement entered into between the department and licensed or certified behavioral health service providers to resolve administrative complaints, license or certification violations, license or certification suspensions, or license or certification revocations may not reduce the number of violations reported by the department unless the department concludes, based on evidence gathered by inspectors, that the licensed or certified behavioral health service provider did not commit one or more of the violations.

~~((15))~~ (16) In cases in which a behavioral health service provider that is in violation of licensing or certification standards attempts to transfer or sell the behavioral health service provider to a family member, the transfer or sale may only be made for the purpose of remedying license or certification violations and achieving full compliance with the terms of the license or certification. Transfers or sales to family members are prohibited in cases in which the purpose of the transfer or sale is to avoid liability or reset the number of license or certification violations found before the transfer or sale. If the department finds that the owner intends to transfer or sell, or has completed the transfer or sale of, ownership of the behavioral health service provider to a family member solely for the purpose of resetting the number of violations found before the transfer or sale, the department may not renew the behavioral health service provider's license or certification or issue a new license or certification to the behavioral health service provider.

Sec. 1008. RCW 71.24.045 and 2018 c 201 s 4006 and 2018 c 175 s 7 are each reenacted and amended to read as follows:

~~((The behavioral health organization shall:~~

~~(1) Contract as needed with licensed or certified service providers. The behavioral health organization may, in the absence of a licensed or certified service provider entity, become a licensed or certified service provider entity pursuant to minimum standards required for licensing or certification by the department for the purpose of providing services not available from licensed or certified service providers;~~

~~(2) Operate as a licensed or certified service provider if it deems that doing so is more efficient and cost effective than contracting for services. When doing so, the behavioral health organization shall comply with rules adopted by the director that shall provide measurements to determine when a behavioral health organization provided service is more efficient and cost effective;~~

~~(3) Monitor and perform biennial fiscal audits of licensed or certified service providers who have contracted with the behavioral health organization to provide services required by this chapter. The monitoring and audits shall be~~

~~performed by means of a formal process which insures that the licensed or certified service providers and professionals designated in this subsection meet the terms of their contracts;~~

~~(4) Establish reasonable limitations on administrative costs for agencies that contract with the behavioral health organization;~~

~~(5) Assure that the special needs of minorities, older adults, individuals with disabilities, children, and low-income persons are met within the priorities established in this chapter;~~

~~(6) Maintain patient tracking information in a central location as required for resource management services and the authority's information system;~~

~~(7) Collaborate to ensure that policies do not result in an adverse shift of persons with mental illness into state and local correctional facilities;~~

~~(8) Work with the authority to expedite the enrollment or reenrollment of eligible persons leaving state or local correctional facilities and institutions for mental diseases;~~

~~(9) Work closely with the designated crisis responder to maximize appropriate placement of persons into community services;~~

~~(10) Coordinate services for individuals who have received services through the community mental health system and who become patients at a state psychiatric hospital to ensure they are transitioned into the community in accordance with mutually agreed upon discharge plans and upon determination by the medical director of the state psychiatric hospital that they no longer need intensive inpatient care; and~~

~~(11) Allow reimbursement for time spent supervising persons working toward satisfying supervision requirements established for the relevant practice areas pursuant to RCW 18.225.090.) (1) The behavioral health administrative services organization contracted with the authority pursuant to section 1046 of this act shall:~~

~~(a) Administer crisis services for the assigned regional service area. Such services must include:~~

~~(i) A behavioral health crisis hotline for its assigned regional service area;~~

~~(ii) Crisis response services twenty-four hours a day, seven days a week, three hundred sixty-five days a year;~~

~~(iii) Services related to involuntary commitments under chapters 71.05 and 71.34 RCW;~~

~~(iv) Additional noncrisis behavioral health services, within available resources, to individuals who meet certain criteria set by the authority in its contracts with the behavioral health administrative services organization. These services may include services provided through federal grant funds, provisos, and general fund state appropriations;~~

(v) Care coordination, diversion services, and discharge planning for nonmedicaid individuals transitioning from state hospitals or inpatient settings to reduce rehospitalization and utilization of crisis services, as required by the authority in contract; and

(vi) Regional coordination, cross-system and cross-jurisdiction coordination with tribal governments, and capacity building efforts, such as supporting the behavioral health advisory board, the behavioral health ombuds, and efforts to support access to services or to improve the behavioral health system;

(b) Administer and provide for the availability of an adequate network of evaluation and treatment services to ensure access to treatment, investigation, transportation, court-related, and other services provided as required under chapter 71.05 RCW;

(c) Coordinate services for individuals under RCW 71.05.365;

(d) Administer and provide for the availability of resource management services, residential services, and community support services as required under its contract with the authority;

(e) Contract with a sufficient number, as determined by the authority, of licensed or certified providers for crisis services and other behavioral health services required by the authority;

(f) Maintain adequate reserves or secure a bond as required by its contract with the authority;

(g) Establish and maintain quality assurance processes;

(h) Meet established limitations on administrative costs for agencies that contract with the behavioral health administrative services organization; and

(i) Maintain patient tracking information as required by the authority.

(2) The behavioral health administrative services organization must collaborate with the authority and its contracted managed care organizations to develop and implement strategies to coordinate care with tribes and community behavioral health providers for individuals with a history of frequent crisis system utilization.

(3) The behavioral health administrative services organization shall:

(a) Assure that the special needs of minorities, older adults, individuals with disabilities, children, and low-income persons are met;

(b) Collaborate with local government entities to ensure that policies do not result in an adverse shift of persons with mental illness into state and local correctional facilities; and

(c) Work with the authority to expedite the enrollment or reenrollment of eligible persons leaving state or local correctional facilities and institutions for mental diseases.

Sec. 1009. RCW 71.24.061 and 2018 c 288 s 2 and 2018 c 201 s 4007 are each reenacted and amended to read as follows:

(1) The authority shall provide flexibility ~~(in provider contracting to behavioral health organizations for children's mental health services. Behavioral health organization contracts shall authorize behavioral health organizations to allow and encourage licensed or certified community mental health centers to subcontract with individual licensed mental health professionals when necessary to meet the need for)~~ to encourage licensed or certified community behavioral health agencies to subcontract with an adequate, culturally competent, and qualified children's mental health provider network.

(2) To the extent that funds are specifically appropriated for this purpose or that nonstate funds are available, a children's mental health evidence-based practice institute shall be established at the University of Washington division of public behavioral health and justice policy. The institute shall closely collaborate with entities currently engaged in evaluating and promoting the use of evidence-based, research-based, promising, or consensus-based practices in children's mental health treatment, including but not limited to the University of Washington department of psychiatry and behavioral sciences, Seattle children's hospital, the University of Washington school of nursing, the University of Washington school of social work, and the Washington state institute for public policy. To ensure that funds appropriated are used to the greatest extent possible for their intended purpose, the University of Washington's indirect costs of administration shall not exceed ten percent of appropriated funding. The institute shall:

(a) Improve the implementation of evidence-based and research-based practices by providing sustained and effective training and consultation to licensed children's mental health providers and child-serving agencies who are implementing evidence-based or researched-based practices for treatment of children's emotional or behavioral disorders, or who are interested in adapting these practices to better serve ethnically or culturally diverse children. Efforts under this subsection should include a focus on appropriate oversight of implementation of evidence-based practices to ensure fidelity to these practices and thereby achieve positive outcomes;

(b) Continue the successful implementation of the "partnerships for success" model by consulting with communities so they may select, implement, and continually evaluate the success of evidence-based practices that are relevant to the needs of children, youth, and families in their community;

(c) Partner with youth, family members, family advocacy, and culturally competent provider organizations to develop a series of information sessions, literature, and online resources for families to become informed and engaged in evidence-based and research-based practices;

(d) Participate in the identification of outcome-based performance measures under RCW 71.36.025(2) and partner in a statewide effort to implement statewide outcomes monitoring and quality improvement processes; and

(e) Serve as a statewide resource to the authority and other entities on child and adolescent evidence-based, research-based, promising, or consensus-based practices for children's mental health treatment, maintaining a working knowledge through ongoing review of academic and professional literature, and knowledge of other evidence-based practice implementation efforts in Washington and other states.

(3)(a) To the extent that funds are specifically appropriated for this purpose, the ~~((health care))~~ authority in collaboration with the University of Washington department of psychiatry and behavioral sciences and Seattle children's hospital shall:

~~((a))~~ (i) Implement a program to support primary care providers in the assessment and provision of appropriate diagnosis and treatment of children with mental and behavioral health disorders and track outcomes of this program;

~~((b))~~ (ii) Beginning January 1, 2019, implement a two-year pilot program called the partnership access line for moms and kids to:

~~((i))~~ (A) Support obstetricians, pediatricians, primary care providers, mental health professionals, and other health care professionals providing care to pregnant women and new mothers through same-day telephone consultations in the assessment and provision of appropriate diagnosis and treatment of depression in pregnant women and new mothers; and

~~((ii))~~ (B) Facilitate referrals to children's mental health services and other resources for parents and guardians with concerns related to the mental health of the parent or guardian's child. Facilitation activities include assessing the level of services needed by the child; within seven days of receiving a call from a parent or guardian, identifying mental health professionals who are in-network with the child's health care coverage who are accepting new patients and taking appointments; coordinating contact between the parent or guardian and the mental health professional; and providing postreferral reviews to determine if the child has outstanding needs. In conducting its referral activities, the program shall collaborate with existing databases and resources to identify in-network mental health professionals.

~~((e))~~ (b) The program activities described in (a)(i) and ~~((b)(i))~~ (a)(ii)(A) of this subsection shall be designed to promote more accurate diagnoses and treatment through timely case consultation between primary care providers and child psychiatric specialists, and focused educational learning collaboratives with primary care providers.

(4) The ~~((health care))~~ authority, in collaboration with the University of Washington department of psychiatry and behavioral sciences and Seattle children's hospital, shall report on the following:

(a) The number of individuals who have accessed the resources described in subsection (3) of this section;

(b) The number of providers, by type, who have accessed the resources described in subsection (3) of this section;

(c) Demographic information, as available, for the individuals described in (a) of this subsection. Demographic information may not include any personally identifiable information and must be limited to the individual's age, gender, and city and county of residence;

(d) A description of resources provided;

(e) Average time frames from receipt of call to referral for services or resources provided; and

(f) Systemic barriers to services, as determined and defined by the health care authority, the University of Washington department of psychiatry and behavioral sciences, and Seattle children's hospital.

(5) Beginning December 30, 2019, and annually thereafter, the ~~((health care))~~ authority must submit, in compliance with RCW 43.01.036, a report to the governor and appropriate committees of the legislature with findings and recommendations for improving services and service delivery from subsection (4) of this section.

(6) The ~~((health care))~~ authority shall enforce requirements in managed care contracts to ensure care coordination and network adequacy issues are addressed in order to remove barriers to access to mental health services identified in the report described in subsection (4) of this section.

Sec. 1010. RCW 71.24.100 and 2018 c 201 s 4008 are each amended to read as follows:

(1) A county authority or a group of county authorities may enter into a joint operating agreement to ~~((respond to a request for a detailed plan and))~~ submit a request to contract with the ~~((state))~~ authority to operate a behavioral health administrative services organization whose boundaries are consistent with the regional service areas established under RCW 74.09.870. ~~((Any agreement between two or more county authorities shall provide:~~

~~(1) That each county shall bear a share of the cost of mental health services; and~~

~~(2) That the treasurer of one participating county shall be the custodian of funds made available for the purposes of such mental health services, and that the treasurer may make payments from such funds upon audit by the appropriate auditing officer of the county for which he or she is treasurer.))~~

(2) All counties within the regional service area must mutually agree to enter into a contract with the authority to become a behavioral health administrative services organization and appoint a single fiscal agent for the regional service area. Similarly, in order to terminate such contract, all counties that are contracted with the authority as a behavioral health administrative services organization must mutually agree to terminate the contract with the authority.

(3) Once the authority receives a request from a county or a group of counties within a regional service area to be the designated behavioral health administrative services organization, the authority must promptly

collaborate with the county or group of counties within that regional service area to determine the most feasible implementation date and coordinate readiness reviews.

(4) No behavioral health administrative services organization may contract with itself as a behavioral health agency, or contract with a behavioral health agency that has administrative linkages to the behavioral health administrative services organization in any manner that would give the agency a competitive advantage in obtaining or competing for contracts, except that a county or group of counties may provide designated crisis responder services, initial crisis services, criminal diversion services, hospital reentry services, and criminal reentry services. The county-administered service must have a clear separation of powers and duties separate from a county-run behavioral health administrative services organization and suitable accounting procedures must be followed to ensure the funding is traceable and accounted for separately from other funds.

(5) Nothing in this section limits the authority's ability to take remedial actions up to and including termination of a contract in order to enforce contract terms or to remedy nonperformance of contractual duties.

Sec. 1011. RCW 71.24.155 and 2018 c 201 s 4009 are each amended to read as follows:

Grants shall be made by the authority to behavioral health administrative services organizations and managed care organizations for community ~~((mental))~~ behavioral health programs totaling not less than ninety-five percent of available resources. The authority may use up to forty percent of the remaining five percent to provide community demonstration projects, including early intervention or primary prevention programs for children, and the remainder shall be for emergency needs and technical assistance under this chapter.

Sec. 1012. RCW 71.24.160 and 2018 c 201 s 4010 are each amended to read as follows:

The behavioral health administrative services organizations shall make satisfactory showing to the director that state funds shall in no case be used to replace local funds from any source being used to finance mental health services prior to January 1, 1990. Maintenance of effort funds devoted to judicial services related to involuntary commitment reimbursed under RCW 71.05.730 must be expended for other purposes that further treatment for mental health and ~~((chemical dependency))~~ substance use disorders.

Sec. 1013. RCW 71.24.215 and 2018 c 201 s 4011 are each amended to read as follows:

Clients receiving ~~((mental))~~ behavioral health services funded by available resources shall be charged a fee under sliding-scale fee schedules, based on ability to pay, approved by the authority ~~((or the department of social and health services, as appropriate))~~. Fees shall not exceed the actual cost of care.

Sec. 1014. RCW 71.24.220 and 2018 c 201 s 4012 are each amended to read as follows:

The director may withhold state grants in whole or in part for any community (~~(mental)~~) behavioral health program in the event of a failure to comply with this chapter or the related rules adopted by the authority.

Sec. 1015. RCW 71.24.240 and 2018 c 201 s 4013 are each amended to read as follows:

In order to establish eligibility for funding under this chapter, any behavioral health administrative services organization seeking to obtain federal funds for the support of any aspect of a community (~~(mental)~~) behavioral health program as defined in this chapter shall submit program plans to the director for prior review and approval before such plans are submitted to any federal agency.

Sec. 1016. RCW 71.24.250 and 2014 c 225 s 38 are each amended to read as follows:

The behavioral health administrative services organization may accept and expend gifts and grants received from private, county, state, and federal sources.

Sec. 1017. RCW 71.24.260 and 1986 c 274 s 10 are each amended to read as follows:

The department shall waive postgraduate educational requirements applicable to mental health professionals under this chapter for those persons who have a bachelor's degree and on June 11, 1986:

(1) Are employed by an agency subject to licensure under this chapter, the community (~~(mental)~~) behavioral health services act, in a capacity involving the treatment of mental illness; and

(2) Have at least ten years of full-time experience in the treatment of mental illness.

Sec. 1018. RCW 71.24.300 and 2018 c 201 s 4014 are each amended to read as follows:

(1) (~~Upon the request of a tribal authority or authorities within a behavioral health organization the joint operating agreement or the county authority shall allow for the inclusion of the tribal authority to be represented as a party to the behavioral health organization.~~

(2) ~~The roles and responsibilities of the county and tribal authorities shall be determined by the terms of that agreement including a determination of membership on the governing board and advisory committees, the number of tribal representatives to be party to the agreement, and the provisions of law and shall assure the provision of culturally competent services to the tribes served.~~

(3) ~~The state behavioral health authority may not determine the roles and responsibilities of county authorities as to each other under behavioral health organizations by~~

~~rule, except to assure that all duties required of behavioral health organizations are assigned and that counties and the behavioral health organization do not duplicate functions and that a single authority has final responsibility for all available resources and performance under the behavioral health organization's contract with the director.~~

(4) ~~If a behavioral health organization is a private entity, the authority shall allow for the inclusion of the tribal authority to be represented as a party to the behavioral health organization.~~

(5) ~~The roles and responsibilities of the private entity and the tribal authorities shall be determined by the authority, through negotiation with the tribal authority.~~

(6) ~~Behavioral health organizations shall submit an overall six year operating and capital plan, timeline, and budget and submit progress reports and an updated two year plan biennially thereafter, to assume within available resources all of the following duties:~~

(a) ~~Administer and provide for the availability of all resource management services, residential services, and community support services.~~

(b) ~~Administer and provide for the availability of an adequate network of evaluation and treatment services to ensure access to treatment, all investigation, transportation, court related, and other services provided by the state or counties pursuant to chapter 71.05 RCW.~~

(c) ~~Provide within the boundaries of each behavioral health organization evaluation and treatment services for at least ninety percent of persons detained or committed for periods up to seventeen days according to chapter 71.05 RCW. Behavioral health organizations may contract to purchase evaluation and treatment services from other organizations if they are unable to provide for appropriate resources within their boundaries. Insofar as the original intent of serving persons in the community is maintained, the director is authorized to approve exceptions on a case-by-case basis to the requirement to provide evaluation and treatment services within the boundaries of each behavioral health organization. Such exceptions are limited to:~~

(i) ~~Contracts with neighboring or contiguous regions; or~~

(ii) ~~Individuals detained or committed for periods up to seventeen days at the state hospitals at the discretion of the director.~~

(d) ~~Administer and provide for the availability of all other mental health services, which shall include patient counseling, day treatment, consultation, education services, employment services as described in RCW 71.24.035, and mental health services to children.~~

(e) ~~Establish standards and procedures for reviewing individual service plans and determining when that person may be discharged from resource management services.~~

(7) ~~A behavioral health organization may request that any state owned land, building, facility, or other capital asset which was ever purchased, deeded, given, or placed in trust for the care of the persons with mental illness and which~~

~~is within the boundaries of a behavioral health organization be made available to support the operations of the behavioral health organization. State agencies managing such capital assets shall give first priority to requests for their use pursuant to this chapter.~~

~~(8))~~ Each behavioral health administrative services organization shall appoint a behavioral health advisory board which shall review and provide comments on plans and policies developed under this chapter, provide local oversight regarding the activities of the behavioral health administrative services organization, and work with the behavioral health administrative services organization to resolve significant concerns regarding service delivery and outcomes. The authority shall establish statewide procedures for the operation of regional advisory committees including mechanisms for advisory board feedback to the authority regarding behavioral health administrative services organization performance. The composition of the board shall be broadly representative of the demographic character of the region and shall include, but not be limited to, representatives of consumers of substance use disorder and mental health services and their families, law enforcement, and, where the county is not the behavioral health administrative services organization, county elected officials. Composition and length of terms of board members may differ between behavioral health administrative services organizations but shall be included in each behavioral health administrative services organization's contract and approved by the director.

~~((9) Behavioral health organizations shall assume all duties specified in their plans and joint operating agreements through biennial contractual agreements with the director.~~

~~(10) Behavioral health organizations may receive technical assistance from the housing trust fund and may identify and submit projects for housing and housing support services to the housing trust fund established under chapter 43.185 RCW. Projects identified or submitted under this subsection must be fully integrated with the behavioral health organization six year operating and capital plan, timeline, and budget required by subsection (6) of this section.)~~ (2) The authority must allow for the inclusion of tribes in any interlocal leadership structure or committees formed under RCW 71.24.880, when requested by a tribe.

(3) If an interlocal leadership structure is not formed under RCW 71.24.880, the roles and responsibilities of the behavioral health administrative services organizations, managed care organizations, counties, and each tribe shall be determined by the authority through negotiation with the tribes.

Sec. 1019. RCW 71.24.335 and 2017 c 202 s 7 are each amended to read as follows:

(1) Upon initiation or renewal of a contract with the ~~((department))~~ authority, ~~((a))~~ behavioral health administrative services organizations and managed care organizations shall reimburse a provider for a behavioral health service provided to a covered person who is under

eighteen years old through telemedicine or store and forward technology if:

(a) The behavioral health administrative services organization or managed care organization in which the covered person is enrolled provides coverage of the behavioral health service when provided in person by the provider; and

(b) The behavioral health service is medically necessary.

(2)(a) If the service is provided through store and forward technology there must be an associated visit between the covered person and the referring provider. Nothing in this section prohibits the use of telemedicine for the associated office visit.

(b) For purposes of this section, reimbursement of store and forward technology is available only for those services specified in the negotiated agreement between the behavioral health administrative services organization, or managed care organization, and the provider.

(3) An originating site for a telemedicine behavioral health service subject to subsection (1) of this section means an originating site as defined in rule by the department or the health care authority.

(4) Any originating site, other than a home, under subsection (3) of this section may charge a facility fee for infrastructure and preparation of the patient. Reimbursement must be subject to a negotiated agreement between the originating site and the behavioral health administrative services organization, or managed care organization, as applicable. A distant site or any other site not identified in subsection (3) of this section may not charge a facility fee.

(5) ~~((A))~~ Behavioral health administrative services organizations and managed care organizations may not distinguish between originating sites that are rural and urban in providing the coverage required in subsection (1) of this section.

(6) ~~((A))~~ Behavioral health administrative services organizations and managed care organizations may subject coverage of a telemedicine or store and forward technology behavioral health service under subsection (1) of this section to all terms and conditions of the behavioral health administrative services organization or managed care organization in which the covered person is enrolled, including, but not limited to, utilization review, prior authorization, deductible, copayment, or coinsurance requirements that are applicable to coverage of a comparable behavioral health care service provided in person.

(7) This section does not require a behavioral health administrative services organization or a managed care organization to reimburse:

(a) An originating site for professional fees;

(b) A provider for a behavioral health service that is not a covered benefit ~~((under the behavioral health organization));~~ or

(c) An originating site or provider when the site or provider is not a contracted provider (~~(with the behavioral health organization)~~).

(8) For purposes of this section:

(a) "Distant site" means the site at which a physician or other licensed provider, delivering a professional service, is physically located at the time the service is provided through telemedicine;

(b) "Hospital" means a facility licensed under chapter 70.41, 71.12, or 72.23 RCW;

(c) "Originating site" means the physical location of a patient receiving behavioral health services through telemedicine;

(d) "Provider" has the same meaning as in RCW 48.43.005;

(e) "Store and forward technology" means use of an asynchronous transmission of a covered person's medical or behavioral health information from an originating site to the provider at a distant site which results in medical or behavioral health diagnosis and management of the covered person, and does not include the use of audio-only telephone, facsimile, or email; and

(f) "Telemedicine" means the delivery of health care or behavioral health services through the use of interactive audio and video technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. For purposes of this section only, "telemedicine" does not include the use of audio-only telephone, facsimile, or email.

(9) The ~~((department must, in consultation with the health care))~~ authority ~~((;))~~ must adopt rules as necessary to implement the provisions of this section.

Sec. 1020. RCW 71.24.350 and 2018 c 201 s 4019 are each amended to read as follows:

The authority shall require each behavioral health administrative services organization to provide for a separately funded behavioral health ombuds office (~~(in each behavioral health organization)~~) that is independent of the behavioral health administrative services organization and managed care organizations for the assigned regional service area. The ombuds office shall maximize the use of consumer advocates.

Sec. 1021. RCW 71.24.370 and 2018 c 201 s 4021 are each amended to read as follows:

(1) Except for monetary damage claims which have been reduced to final judgment by a superior court, this section applies to all claims against the state, state agencies, state officials, or state employees that exist on or arise after March 29, 2006.

(2) Except as expressly provided in contracts entered into ~~((between))~~ by the authority ~~((and the behavioral health~~

~~organizations after March 29, 2006))~~, the entities identified in subsection (3) of this section shall have no claim for declaratory relief, injunctive relief, judicial review under chapter 34.05 RCW, or civil liability against the state ~~((or))~~, state agencies, state officials, or state employees for actions or inactions performed pursuant to the administration of this chapter with regard to the following: (a) The allocation or payment of federal or state funds; (b) the use or allocation of state hospital beds; or (c) financial responsibility for the provision of inpatient mental health care.

(3) This section applies to counties, behavioral health administrative services organizations, managed care organizations, and entities which contract to provide behavioral health ~~((organization))~~ services and their subcontractors, agents, or employees.

Sec. 1022. RCW 71.24.380 and 2018 c 201 s 4022 are each amended to read as follows:

(1) The director shall purchase ~~((mental health and chemical dependency treatment))~~ behavioral health services primarily through managed care contracting, but may continue to purchase behavioral health services directly from ~~((tribal clinics and other tribal providers))~~ providers serving medicaid clients who are not enrolled in a managed care organization.

~~((a))~~ The director shall request a detailed plan from the entities identified in (b) of this subsection that demonstrates compliance with the contractual elements of RCW 74.09.871 and federal regulations related to medicaid managed care contracting including, but not limited to: Having a sufficient network of providers to provide adequate access to mental health and chemical dependency services for residents of the regional service area that meet eligibility criteria for services, ability to maintain and manage adequate reserves, and maintenance of quality assurance processes. Any responding entity that submits a detailed plan that demonstrates that it can meet the requirements of this section must be awarded the contract to serve as the behavioral health organization.

~~((i))~~ For purposes of responding to the request for a detailed plan under (a) of this subsection, the entities from which a plan will be requested are:

(A) A county in a single county regional service area that currently serves as the regional support network for that area;

~~((B))~~ In the event that a county has made a decision prior to January 1, 2014, not to contract as a regional support network, any private entity that serves as the regional support network for that area;

~~((C))~~ All counties within a regional service area that includes more than one county, which shall form a responding entity through the adoption of an interlocal agreement. The interlocal agreement must specify the terms by which the responding entity shall serve as the behavioral health organization within the regional service area.

~~((ii))~~ In the event that a regional service area is comprised of multiple counties including one that has made

~~a decision prior to January 1, 2014, not to contract as a regional support network the counties shall adopt an interlocal agreement and may respond to the request for a detailed plan under (a) of this subsection and the private entity may also respond to the request for a detailed plan. If both responding entities meet the requirements of this section, the responding entities shall follow the authority's procurement process established in subsection (3) of this section.~~

~~(3) If an entity that has received a request under this section to submit a detailed plan does not respond to the request, a responding entity under subsection (1) of this section is unable to substantially meet the requirements of the request for a detailed plan, or more than one responding entity substantially meets the requirements for the request for a detailed plan, the authority shall use a procurement process in which other entities recognized by the director may bid to serve as the behavioral health organization in that regional service area.~~

~~(4) Contracts for behavioral health organizations must begin on April 1, 2016.~~

~~(5) Upon request of all of the county authorities in a regional service area, the authority may purchase behavioral health services through an integrated medical and behavioral health services contract with a behavioral health organization or a managed health care system as defined in RCW 74.09.522, pursuant to standards to be developed by the authority. Any contract for such a purchase must comply with all federal medicaid and state law requirements related to managed health care contracting.) The director shall require that contracted managed care organizations have a sufficient network of providers to provide adequate access to behavioral health services for residents of the regional service area that meet eligibility criteria for services, and for maintenance of quality assurance processes. Contracts with managed care organizations must comply with all federal medicaid and state law requirements related to managed health care contracting, including RCW 74.09.522.~~

(3) A managed care organization must contract with the authority's selected behavioral health administrative services organization for the assigned regional service area for the administration of crisis services. The contract shall require the managed care organization to reimburse the behavioral health administrative services organization for behavioral health crisis services delivered to individuals enrolled in the managed care organization.

(4) A managed care organization must collaborate with the authority and its contracted behavioral health administrative services organization to develop and implement strategies to coordinate care with tribes and community behavioral health providers for individuals with a history of frequent crisis system utilization.

(5) A managed care organization must work closely with designated crisis responders, behavioral health administrative services organizations, and behavioral health providers to maximize appropriate placement of persons into community services, ensuring the client receives the least restrictive level of care appropriate for their condition. Additionally, the managed care organization shall work with

the authority to expedite the enrollment or reenrollment of eligible persons leaving state or local correctional facilities and institutions for mental diseases.

(6) As an incentive to county authorities to become early adopters of fully integrated purchasing of medical and behavioral health services, the standards adopted by the authority (~~under subsection (5) of this section~~) shall provide for an incentive payment to counties which elect to move to full integration by January 1, 2016. Subject to federal approval, the incentive payment shall be targeted at ten percent of savings realized by the state within the regional service area in which the fully integrated purchasing takes place. Savings shall be calculated in alignment with the outcome and performance measures established in RCW 43.20A.895 (as recodified by this act), 70.320.020, and 71.36.025, and incentive payments for early adopter counties shall be made available for up to a six-year period, or until full integration of medical and behavioral health services is accomplished statewide, whichever comes sooner, according to rules to be developed by the authority.

Sec. 1023. RCW 71.24.385 and 2018 c 201 s 4023 and 2018 c 175 s 6 are each reenacted and amended to read as follows:

(1) Within funds appropriated by the legislature for this purpose, behavioral health administrative services organizations and managed care organizations, as applicable, shall develop the means to serve the needs of people:

(a) With mental disorders residing within the boundaries of their regional service area. Elements of the program may include:

- (i) Crisis diversion services;
- (ii) Evaluation and treatment and community hospital beds;
- (iii) Residential treatment;
- (iv) Programs for intensive community treatment;
- (v) Outpatient services, including family support;
- (vi) Peer support services;
- (vii) Community support services;
- (viii) Resource management services; and
- (ix) Supported housing and supported employment services.

(b) With substance use disorders and their families, people incapacitated by alcohol or other psychoactive chemicals, and intoxicated people.

(i) Elements of the program shall include, but not necessarily be limited to, a continuum of substance use disorder treatment services that includes:

- (A) Withdrawal management;
- (B) Residential treatment; and

(C) Outpatient treatment.

(ii) The program may include peer support, supported housing, supported employment, crisis diversion, or recovery support services.

(iii) The authority may contract for the use of an approved substance use disorder treatment program or other individual or organization if the director considers this to be an effective and economical course to follow.

(2)(a) The ~~((behavioral health))~~ managed care organization and the behavioral health administrative services organization shall have the flexibility, within the funds appropriated by the legislature for this purpose and the terms of their contract, to design the mix of services that will be most effective within their service area of meeting the needs of people with behavioral health disorders and avoiding placement of such individuals at the state mental hospital. ~~((Behavioral health))~~ Managed care organizations and behavioral health administrative services organizations are encouraged to maximize the use of evidence-based practices and alternative resources with the goal of substantially reducing and potentially eliminating the use of institutions for mental diseases.

(b) ~~((The behavioral health))~~ Managed care organizations and behavioral health administrative services organizations may allow reimbursement to providers for services delivered through a partial hospitalization or intensive outpatient program. Such payment and services are distinct from the state's delivery of wraparound with intensive services under the *T.R. v. Strange and (McDermott, formerly the T.R. v. Dreyfus and Porter)*, *Birch* settlement agreement.

(3)(a) Treatment provided under this chapter must be purchased primarily through managed care contracts.

(b) Consistent with RCW 71.24.580, services and funding provided through the criminal justice treatment account are intended to be exempted from managed care contracting.

Sec. 1024. RCW 71.24.405 and 2018 c 201 s 4025 are each amended to read as follows:

The authority shall ~~((establish a))~~ work comprehensively and collaboratively ((effort within)) with behavioral health administrative services organizations and with local ~~((mental))~~ behavioral health service providers ~~((aimed at creating))~~ to create innovative and streamlined community ~~((mental))~~ behavioral health service delivery systems ~~((in order to carry out the purposes set forth in RCW 71.24.400))~~ and to capture the diversity of the community ~~((mental))~~ behavioral health service delivery system. The authority ~~((must accomplish the following))~~ shall periodically:

(1) ~~((Identification))~~ Identify, review, and ~~((cataloging of))~~ catalog all rules, regulations, duplicative administrative and monitoring functions, and other requirements that ~~((currently))~~ lead to inefficiencies in the community ~~((mental))~~ behavioral health service delivery system and, if possible, eliminate the requirements;

~~((The systematic and incremental development of a single system of accountability for all federal, state, and local funds provided to the community mental health service delivery system. Systematic efforts should be made to include federal and local funds into the single system of accountability;~~

~~((The elimination of process))~~ Review regulations ~~((and related)),~~ contracts, and reporting requirements ~~((In place of the regulations and requirements, a set))~~ to ensure achievement of outcomes for ~~((mental))~~ behavioral health adult and children clients ~~((according to this chapter must be used to measure the performance of mental health service providers and behavioral health organizations. Such outcomes shall focus on stabilizing out of home and hospital care, increasing stable community living, increasing age-appropriate activities, achieving family and consumer satisfaction with services, and system efficiencies))~~ under RCW 43.20A.895 (as recodified by this act);

~~((4) Evaluation of the feasibility of contractual agreements between the authority and behavioral health organizations and mental health service providers that link financial incentives to the success or failure of mental health service providers and behavioral health organizations to meet outcomes established for mental health service clients;~~

~~((The involvement of mental))~~ (3) Involve behavioral health consumers and their representatives ~~((Mental health consumers and their representatives will be involved in the development of outcome standards for mental health clients under section 5 of this act; and~~

~~((An independent evaluation component to measure the success of the authority in fully implementing the provisions of RCW 71.24.400 and this section)); and~~

(4) Provide for an independent evaluation component to measure the success of the authority in fully implementing the provisions of RCW 71.24.400 and this section.

Sec. 1025. RCW 71.24.420 and 2018 c 201 s 4027 are each amended to read as follows:

The authority shall operate the community ~~((mental))~~ behavioral health service delivery system authorized under this chapter within the following constraints:

(1) The full amount of federal funds for ~~((mental))~~ community behavioral health system services, plus qualifying state expenditures as appropriated in the biennial operating budget, shall be appropriated to the authority each year in the biennial appropriations act to carry out the provisions of the community ~~((mental))~~ behavioral health service delivery system authorized in this chapter.

(2) The authority may expend funds defined in subsection (1) of this section in any manner that will effectively accomplish the outcome measures established in RCW 43.20A.895 (as recodified by this act) and 71.36.025 and performance measures linked to those outcomes.

(3) The authority shall implement strategies that accomplish the outcome measures established in RCW 43.20A.895 (as recodified by this act), 70.320.020, and 71.36.025 and performance measures linked to those outcomes.

(4) The authority shall monitor expenditures against the appropriation levels provided for in subsection (1) of this section and report to the governor's office and the appropriate committees of the legislature once every two years, on or about December 1st, on each even-numbered year.

Sec. 1026. RCW 71.24.430 and 2018 c 201 s 4028 are each amended to read as follows:

(1) The authority shall ensure the coordination of allied services for ~~((mental))~~ behavioral health clients. The authority shall implement strategies for resolving organizational, regulatory, and funding issues at all levels of the system, including the state, the behavioral health administrative services organizations, managed care organizations, and local service providers.

(2) The authority shall propose, in operating budget requests, transfers of funding among programs to support collaborative service delivery to persons who require services from multiple department of social and health services and authority programs. ~~((The authority shall report annually to the appropriate committees of the senate and house of representatives on actions and projects it has taken to promote collaborative service delivery))~~ The authority shall provide status reports as requested by the legislature.

Sec. 1027. RCW 71.24.450 and 1997 c 342 s 1 are each amended to read as follows:

(1) Many ~~((acute and chronically mentally ill))~~ offenders with acute and chronic mental illness are delayed in their release from Washington correctional facilities due to their inability to access reasonable treatment and living accommodations prior to the maximum expiration of their sentences. Often the offender reaches the end of his or her sentence and is released without any follow-up care, funds, or housing. These delays are costly to the state, often lead to psychiatric relapse, and result in unnecessary risk to the public.

Many of these offenders ((rarely possess)) lack the skills or emotional stability to maintain employment or even complete applications to receive entitlement funding. ((Nationwide only five percent of diagnosed schizophrenics are able to maintain part time or full time employment.)) Housing and appropriate treatment are difficult to obtain.

This lack of resources, funding, treatment, and housing creates additional stress for the ~~((mentally ill))~~ offender with mental illness, impairing self-control and judgment. When the mental illness is instrumental in the offender's patterns of crime, such stresses may lead to a worsening of his or her illness, reoffending, and a threat to public safety.

(2) It is the intent of the legislature to create a ~~((pilot))~~ program to provide for postrelease mental health care and housing for a select group of ~~((mentally ill))~~ offenders with mental illness entering community living, in order to reduce incarceration costs, increase public safety, and enhance the offender's quality of life.

Sec. 1028. RCW 71.24.455 and 2018 c 201 s 4029 are each amended to read as follows:

(1) The director shall select and contract with a behavioral health administrative services organization, managed care organization, behavioral health agency, or private provider to provide specialized access and services to offenders with mental illness upon release from total confinement within the department of corrections and selected by the behavioral health administrative services organization, managed care organization, behavioral health agency, or private provider as high-priority clients for services and who meet service program entrance criteria. The program shall enroll no more than twenty-five offenders at any one time, or a number of offenders that can be accommodated within the appropriated funding level, and shall seek to fill any vacancies that occur.

(2) Criteria shall include a determination by department of corrections staff that:

(a) The offender suffers from a major mental illness and needs continued mental health treatment;

(b) The offender's previous crime or crimes have been determined by either the court or department of corrections staff to have been substantially influenced by the offender's mental illness;

(c) It is believed the offender will be less likely to commit further criminal acts if provided ongoing mental health care;

(d) The offender is unable or unlikely to obtain housing and/or treatment from other sources for any reason; and

(e) The offender has at least one year remaining before his or her sentence expires but is within six months of release to community housing and is currently housed within a work release facility or any department of corrections' division of prisons facility.

(3) The behavioral health administrative services organization, managed care organization, behavioral health agency, or private provider shall provide specialized access and services to the selected offenders. The services shall be aimed at lowering the risk of recidivism. An oversight committee composed of a representative of the authority, a representative of the selected managed care organization, behavioral health administrative services organization, or private provider, and a representative of the department of corrections shall develop policies to guide the pilot program, provide dispute resolution including making determinations as to when entrance criteria or required services may be waived in individual cases, advise the department of corrections and the managed care organization, behavioral

health administrative services organization, or private provider on the selection of eligible offenders, and set minimum requirements for service contracts. The selected managed care organization, behavioral health administrative services organization, or private provider shall implement the policies and service contracts. The following services shall be provided:

(a) Intensive case management to include a full range of intensive community support and treatment in client-to-staff ratios of not more than ten offenders per case manager including: (i) A minimum of weekly group and weekly individual counseling; (ii) home visits by the program manager at least two times per month; and (iii) counseling focusing on maintaining and promoting ongoing stability, relapse prevention, and ~~((past, current, or future behavior of the offender))~~ recovery.

(b) The case manager shall attempt to locate and procure housing appropriate to the living and clinical needs of the offender and as needed to maintain the psychiatric stability of the offender. The entire range of emergency, transitional, and permanent housing and involuntary hospitalization must be considered as available housing options. A housing subsidy may be provided to offenders to defray housing costs up to a maximum of six thousand six hundred dollars per offender per year and be administered by the case manager. Additional funding sources may be used to offset these costs when available.

(c) The case manager shall collaborate with the assigned prison, work release, or community corrections staff during release planning, prior to discharge, and in ongoing supervision of the offender while under the authority of the department of corrections.

(d) Medications including the full range of psychotropic medications including atypical antipsychotic medications may be required as a condition of the program. Medication prescription, medication monitoring, and counseling to support offender understanding, acceptance, and compliance with prescribed medication regimens must be included.

(e) A systematic effort to engage offenders to continuously involve themselves in current and long-term treatment and appropriate rehabilitative activities shall be made.

(f) Classes appropriate to the clinical and living needs of the offender and appropriate to his or her level of understanding.

(g) The case manager shall assist the offender in the application and qualification for entitlement funding, including medicaid, state assistance, and other available government and private assistance at any point that the offender is qualified and resources are available.

(h) The offender shall be provided access to daily activities such as drop-in centers, prevocational and vocational training and jobs, and volunteer activities.

(4) Once an offender has been selected into the pilot program, the offender shall remain in the program until the end of his or her sentence or unless the offender is released

from the pilot program earlier by the department of corrections.

(5) Specialized training in the management and supervision of high-crime risk offenders with mental illness shall be provided to all participating mental health providers by the authority and the department of corrections prior to their participation in the program and as requested thereafter.

~~((6) The pilot program provided for in this section must be providing services by July 1, 1998.))~~

Sec. 1029. RCW 71.24.460 and 2018 c 201 s 4030 are each amended to read as follows:

The authority, in collaboration with the department of corrections and the oversight committee created in RCW 71.24.455, shall track outcomes and submit to the legislature annual reports regarding services and outcomes. The reports shall include the following: (1) A statistical analysis regarding the reoffense and reinstitutionalization rate by the enrollees in the program set forth in RCW 71.24.455; (2) a quantitative description of the services provided in the program set forth in RCW 71.24.455; and (3) recommendations for any needed modifications in the services and funding levels to increase the effectiveness of the program set forth in RCW 71.24.455. ~~((By December 1, 2003, the department shall certify the reoffense rate for enrollees in the program authorized by RCW 71.24.455 to the office of financial management and the appropriate legislative committees. If the reoffense rate exceeds fifteen percent, the authorization for the department to conduct the program under RCW 71.24.455 is terminated on January 1, 2004.))~~

Sec. 1030. RCW 71.24.470 and 2018 c 201 s 4031 are each amended to read as follows:

(1) The director shall contract, to the extent that funds are appropriated for this purpose, for case management services and such other services as the director deems necessary to assist offenders identified under RCW 72.09.370 for participation in the offender reentry community safety program. The contracts may be with ~~((behavioral health organizations or))~~ any ~~((other))~~ qualified and appropriate entities.

(2) The case manager has the authority to assist these offenders in obtaining the services, as set forth in the plan created under RCW 72.09.370(2), for up to five years. The services may include coordination of mental health services, assistance with unfunded medical expenses, obtaining ~~((chemical dependency))~~ substance use disorder treatment, housing, employment services, educational or vocational training, independent living skills, parenting education, anger management services, and such other services as the case manager deems necessary.

(3) The legislature intends that funds appropriated for the purposes of RCW 72.09.370, 71.05.145, and 71.05.212, and this section ~~((and distributed to the behavioral health organizations))~~ are to supplement and not to supplant general funding. Funds appropriated to

implement RCW 72.09.370, 71.05.145, and 71.05.212, and this section are not to be considered available resources as defined in RCW 71.24.025 and are not subject to the priorities, terms, or conditions in the appropriations act established pursuant to RCW 71.24.035.

(4) The offender reentry community safety program was formerly known as the community integration assistance program.

Sec. 1031. RCW 71.24.480 and 2018 c 201 s 4032 are each amended to read as follows:

(1) A licensed or certified (~~(service provider or behavioral health organization,))~~ behavioral health agency acting in the course of the provider's (~~(or organization's))~~ duties under this chapter, is not liable for civil damages resulting from the injury or death of another caused by a participant in the offender reentry community safety program who is a client of the provider or organization, unless the act or omission of the provider or organization constitutes:

- (a) Gross negligence;
- (b) Willful or wanton misconduct; or
- (c) A breach of the duty to warn of and protect from a client's threatened violent behavior if the client has communicated a serious threat of physical violence against a reasonably ascertainable victim or victims.

(2) In addition to any other requirements to report violations, the licensed or certified (~~(service provider and behavioral health organization,))~~ behavioral health agency shall report an offender's expressions of intent to harm or other predatory behavior, regardless of whether there is an ascertainable victim, in progress reports and other established processes that enable courts and supervising entities to assess and address the progress and appropriateness of treatment.

(3) A licensed or certified (~~(service provider's or behavioral health organization's))~~ behavioral health agency's mere act of treating a participant in the offender reentry community safety program is not negligence. Nothing in this subsection alters the licensed or certified (~~(service provider's or behavioral health organization's))~~ behavioral health agency's normal duty of care with regard to the client.

(4) The limited liability provided by this section applies only to the conduct of licensed or certified (~~(service providers and behavioral health organizations))~~ behavioral health agencies and does not apply to conduct of the state.

(5) For purposes of this section, "participant in the offender reentry community safety program" means a person who has been identified under RCW 72.09.370 as an offender who: (a) Is reasonably believed to be dangerous to himself or herself or others; and (b) has a mental disorder.

Sec. 1032. RCW 71.24.490 and 2018 c 201 s 4033 are each amended to read as follows:

The authority must collaborate with (~~(regional support networks or))~~ behavioral health administrative services organizations, managed care organizations, and the Washington state institute for public policy to estimate the capacity needs for evaluation and treatment services within each regional service area. Estimated capacity needs shall include consideration of the average occupancy rates needed to provide an adequate network of evaluation and treatment services to ensure access to treatment. (~~(A regional service network or))~~ Behavioral health administrative services organizations and managed care organizations must develop and maintain an adequate plan to provide for evaluation and treatment needs.

Sec. 1033. RCW 71.24.500 and 2018 c 201 s 4034 are each amended to read as follows:

The (~~(department of social and health services and the))~~ authority shall periodically publish written guidance and provide trainings to behavioral health administrative services organizations, managed care organizations, and behavioral health providers related to how these organizations may provide outreach, assistance, transition planning, and rehabilitation case management reimbursable under federal law to persons who are incarcerated, involuntarily hospitalized, or in the process of transitioning out of one of these services. The guidance and trainings may also highlight preventive activities not reimbursable under federal law which may be cost-effective in a managed care environment. The purpose of this written guidance and trainings is to champion best clinical practices including, where appropriate, use of care coordination and long-acting injectable psychotropic medication, and to assist the health community to leverage federal funds and standardize payment and reporting procedures. (~~(The authority and the department of social and health services shall construe governing laws liberally to effectuate the broad remedial purposes of chapter 154, Laws of 2016, and provide a status update to the legislature by December 31, 2016.))~~)

Sec. 1034. RCW 71.24.520 and 2018 c 201 s 4036 are each amended to read as follows:

The authority, in the operation of the (~~(chemical dependency))~~ substance use disorder program(~~(s))~~), may:

- (1) Plan, establish, and maintain prevention and treatment programs as necessary or desirable;
- (2) Make contracts necessary or incidental to the performance of its duties and the execution of its powers, including managed care contracts for behavioral health services, contracts entered into under RCW 74.09.522, and contracts with public and private agencies, organizations, and individuals to pay them for services rendered or furnished to persons with substance use disorders, persons incapacitated by alcohol or other psychoactive chemicals, or intoxicated persons;
- (3) Enter into agreements for monitoring of verification of qualifications of counselors employed by approved treatment programs;

(4) Adopt rules under chapter 34.05 RCW to carry out the provisions and purposes of this chapter and contract, cooperate, and coordinate with other public or private agencies or individuals for those purposes;

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

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

(7) Coordinate its activities and cooperate with ~~((chemical dependency))~~ substance use disorder programs in this and other states, and make contracts and other joint or cooperative arrangements with state, local, or private agencies in this and other states for the treatment of persons with substance use disorders and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons and for the common advancement of ~~((chemical dependency))~~ substance use disorder programs;

(8) Keep records and engage in research and the gathering of relevant statistics;

(9) Do other acts and things necessary or convenient to execute the authority expressly granted to it;

(10) Acquire, hold, or dispose of real property or any interest therein, and construct, lease, or otherwise provide treatment programs.

Sec. 1035. RCW 71.24.535 and 2018 c 201 s 4039 are each amended to read as follows:

The authority shall:

(1) Develop, encourage, and foster statewide, regional, and local plans and programs for the prevention of alcoholism and other drug addiction, treatment of persons with substance use disorders and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons in cooperation with public and private agencies, organizations, and individuals and provide technical assistance and consultation services for these purposes;

(2) Assure that any ~~((behavioral health organization managed care contract, or))~~ contract with a managed care ~~((contract under RCW 74.09.522))~~ organization for behavioral health services or programs for the treatment of persons with substance use disorders and their families ~~((; persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons))~~ provides medically necessary services to medicaid recipients. This must include a continuum of mental health and substance use disorder services consistent with the state's medicaid plan or federal

waiver authorities, and nonmedicaid services consistent with priorities established by the authority;

(3) Coordinate the efforts and enlist the assistance of all public and private agencies, organizations, and individuals interested in prevention of alcoholism and drug addiction, and treatment of persons with substance use disorders and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons;

(4) Cooperate with public and private agencies in establishing and conducting programs to provide treatment for persons with substance use disorders and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons who are clients of the correctional system;

(5) Cooperate with the superintendent of public instruction, state board of education, schools, police departments, courts, and other public and private agencies, organizations and individuals in establishing programs for the prevention of substance use disorders, treatment of persons with substance use disorders and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons, and preparing curriculum materials thereon for use at all levels of school education;

(6) Prepare, publish, evaluate, and disseminate educational material dealing with the nature and effects of alcohol and other psychoactive chemicals and the consequences of their use;

(7) Develop and implement, as an integral part of substance use disorder treatment programs, an educational program for use in the treatment of persons with substance use disorders, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons, which program shall include the dissemination of information concerning the nature and effects of alcohol and other psychoactive chemicals, the consequences of their use, the principles of recovery, and HIV and AIDS;

(8) Organize and foster training programs for persons engaged in treatment of persons with substance use disorders, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons;

(9) Sponsor and encourage research into the causes and nature of substance use disorders, treatment of persons with substance use disorders, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons, and serve as a clearinghouse for information relating to substance use disorders;

(10) Specify uniform methods for keeping statistical information by public and private agencies, organizations, and individuals, and collect and make available relevant statistical information, including number of persons treated, frequency of admission and readmission, and frequency and duration of treatment;

(11) Advise the governor in the preparation of a comprehensive plan for treatment of persons with substance use disorders, persons incapacitated by alcohol or other

psychoactive chemicals, and intoxicated persons for inclusion in the state's comprehensive health plan;

(12) Review all state health, welfare, and treatment plans to be submitted for federal funding under federal legislation, and advise the governor on provisions to be included relating to substance use disorders;

(13) Assist in the development of, and cooperate with, programs for ~~((alcohol and other psychoactive chemical))~~ substance use disorder education and treatment for employees of state and local governments and businesses and industries in the state;

(14) Use the support and assistance of interested persons in the community to encourage persons with substance use disorders voluntarily to undergo treatment;

(15) Cooperate with public and private agencies in establishing and conducting programs designed to deal with the problem of persons operating motor vehicles while intoxicated;

(16) Encourage general hospitals and other appropriate health facilities to admit without discrimination persons with substance use disorders, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons and to provide them with adequate and appropriate treatment;

(17) Encourage all health and disability insurance programs to include substance use disorders as a covered illness; and

(18) Organize and sponsor a statewide program to help court personnel, including judges, better understand substance use disorders and the uses of substance use disorder treatment programs and medications.

Sec. 1036. RCW 71.24.540 and 2018 c 201 s 4040 are each amended to read as follows:

The authority shall contract with behavioral health administrative services organizations, managed care organizations, or counties ~~((operating drug courts and counties in the process of implementing new drug courts))~~, as applicable, for the provision of substance use disorder treatment services ordered by a county-operated drug court.

Sec. 1037. RCW 71.24.545 and 2018 c 201 s 4041 are each amended to read as follows:

(1) The authority shall establish by appropriate means a comprehensive and coordinated program for the treatment of persons with substance use disorders and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons.

(2)(a) The program shall include, but not necessarily be limited to, a continuum of ~~((chemical dependency))~~ substance use disorder treatment services that includes:

- (i) Withdrawal management;
- (ii) Residential treatment; and

(iii) Outpatient treatment.

(b) The program may include peer support, supported housing, supported employment, crisis diversion, or recovery support services.

(3) All appropriate public and private resources shall be coordinated with and used in the program when possible.

(4) The authority may contract for the use of an approved treatment program or other individual or organization if the director considers this to be an effective and economical course to follow.

(5) ~~((By April 1, 2016,))~~ Treatment provided under this chapter must be purchased primarily through managed care contracts. Consistent with RCW 71.24.580, services and funding provided through the criminal justice treatment account are intended to be exempted from managed care contracting.

Sec. 1038. RCW 71.24.555 and 2018 c 201 s 4042 are each amended to read as follows:

To be eligible to receive its share of liquor taxes and profits, each city and county shall devote no less than two percent of its share of liquor taxes and profits to the support of a substance use disorder program ~~((approved by the behavioral health organization and the director, and))~~ licensed or certified by the department of health.

Sec. 1039. RCW 71.24.565 and 2018 c 201 s 4043 are each amended to read as follows:

The director shall adopt and may amend and repeal rules for acceptance of persons into the approved treatment program, considering available treatment resources and facilities, for the purpose of early and effective treatment of persons with substance use disorders, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons. In establishing the rules, the ~~((secretary))~~ director shall be guided by the following standards:

(1) If possible a patient shall be treated on a voluntary rather than an involuntary basis.

(2) A patient shall be initially assigned or transferred to outpatient treatment, unless he or she is found to require residential treatment.

(3) A person shall not be denied treatment solely because he or she has withdrawn from treatment against medical advice on a prior occasion or because he or she has relapsed after earlier treatment.

(4) An individualized treatment plan shall be prepared and maintained on a current basis for each patient.

(5) Provision shall be made for a continuum of coordinated treatment services, so that a person who leaves a facility or a form of treatment will have available and use other appropriate treatment.

Sec. 1040. RCW 71.24.580 and 2018 c 205 s 2 and 2018 c 201 s 4044 are each reenacted and amended to read as follows:

(1) The criminal justice treatment account is created in the state treasury. Moneys in the account may be expended solely for: (a) Substance use disorder treatment and treatment support services for offenders with a substance use disorder that, if not treated, would result in addiction, against whom charges are filed by a prosecuting attorney in Washington state; (b) the provision of substance use disorder treatment services and treatment support services for nonviolent offenders within a drug court program; and (c) the administrative and overhead costs associated with the operation of a drug court. Amounts provided in this subsection must be used for treatment and recovery support services for criminally involved offenders and authorization of these services shall not be subject to determinations of medical necessity. During the 2017-2019 fiscal biennium, the legislature may direct the state treasurer to make transfers of moneys in the criminal justice treatment account to the state general fund. It is the intent of the legislature to continue in the 2019-2021 biennium the policy of transferring to the state general fund such amounts as reflect the excess fund balance of the account. Moneys in the account may be spent only after appropriation.

(2) For purposes of this section:

(a) "Treatment" means services that are critical to a participant's successful completion of his or her substance use disorder treatment program, including but not limited to the recovery support and other programmatic elements outlined in RCW 2.30.030 authorizing therapeutic courts; and

(b) "Treatment support" includes transportation to or from inpatient or outpatient treatment services when no viable alternative exists, and child care services that are necessary to ensure a participant's ability to attend outpatient treatment sessions.

(3) Revenues to the criminal justice treatment account consist of: (a) Funds transferred to the account pursuant to this section; and (b) any other revenues appropriated to or deposited in the account.

(4)(a) For the fiscal year beginning July 1, 2005, and each subsequent fiscal year, the state treasurer shall transfer eight million two hundred fifty thousand dollars from the general fund to the criminal justice treatment account, divided into four equal quarterly payments. For the fiscal year beginning July 1, 2006, and each subsequent fiscal year, the amount transferred shall be increased on an annual basis by the implicit price deflator as published by the federal bureau of labor statistics.

(b) In each odd-numbered year, the legislature shall appropriate the amount transferred to the criminal justice treatment account in (a) of this subsection to the department for the purposes of subsection (5) of this section.

(5) Moneys appropriated to the authority from the criminal justice treatment account shall be distributed as specified in this subsection. The authority may retain up to

three percent of the amount appropriated under subsection (4)(b) of this section for its administrative costs.

(a) Seventy percent of amounts appropriated to the authority from the account shall be distributed to counties pursuant to the distribution formula adopted under this section. The authority, in consultation with the department of corrections, the Washington state association of counties, the Washington state association of drug court professionals, the superior court judges' association, the Washington association of prosecuting attorneys, representatives of the criminal defense bar, representatives of substance use disorder treatment providers, and any other person deemed by the authority to be necessary, shall establish a fair and reasonable methodology for distribution to counties of moneys in the criminal justice treatment account. County or regional plans submitted for the expenditure of formula funds must be approved by the panel established in (b) of this subsection.

(b) Thirty percent of the amounts appropriated to the authority from the account shall be distributed as grants for purposes of treating offenders against whom charges are filed by a county prosecuting attorney. The authority shall appoint a panel of representatives from the Washington association of prosecuting attorneys, the Washington association of sheriffs and police chiefs, the superior court judges' association, the Washington state association of counties, the Washington defender's association or the Washington association of criminal defense lawyers, the department of corrections, the Washington state association of drug court professionals, and substance use disorder treatment providers. The panel shall review county or regional plans for funding under (a) of this subsection and grants approved under this subsection. The panel shall attempt to ensure that treatment as funded by the grants is available to offenders statewide.

(6) The county alcohol and drug coordinator, county prosecutor, county sheriff, county superior court, a substance abuse treatment provider appointed by the county legislative authority, a member of the criminal defense bar appointed by the county legislative authority, and, in counties with a drug court, a representative of the drug court shall jointly submit a plan, approved by the county legislative authority or authorities, to the panel established in subsection (5)(b) of this section, for disposition of all the funds provided from the criminal justice treatment account within that county. The funds shall be used solely to provide approved alcohol and substance abuse treatment pursuant to RCW 71.24.560 and treatment support services. No more than ten percent of the total moneys received under subsections (4) and (5) of this section by a county or group of counties participating in a regional agreement shall be spent for treatment support services.

(7) Counties are encouraged to consider regional agreements and submit regional plans for the efficient delivery of treatment under this section.

(8) Moneys allocated under this section shall be used to supplement, not supplant, other federal, state, and local funds used for substance abuse treatment.

(9) Counties must meet the criteria established in RCW 2.30.030(3).

(10) The authority shall annually review and monitor the expenditures made by any county or group of counties that receives appropriated funds distributed under this section. Counties shall repay any funds that are not spent in accordance with the requirements of its contract with the authority.

Sec. 1041. RCW 71.24.600 and 2018 c 201 s 4047 are each amended to read as follows:

The authority shall not refuse admission for diagnosis, evaluation, guidance or treatment to any applicant because it is determined that the applicant is financially unable to contribute fully or in part to the cost of any services or facilities available under the community behavioral health program ~~((on alcoholism))~~.

For nonmedicaid clients, through its contracts with the behavioral health administrative services organizations, the authority may limit admissions of such applicants or modify its programs in order to ensure that expenditures for services or programs do not exceed amounts appropriated by the legislature and are allocated by the authority for such services or programs. For nonmedicaid clients, the authority may establish admission priorities in the event that the number of eligible applicants exceeds the limits set by the authority.

Sec. 1042. RCW 71.24.625 and 2018 c 201 s 4052 are each amended to read as follows:

The authority shall ensure that the provisions of this chapter are applied by ~~((the))~~ behavioral health administrative services organizations and managed care organizations in a consistent and uniform manner. The authority shall also ensure that, to the extent possible within available funds, the ~~((behavioral health organization))~~ designated ~~((chemical dependency specialists))~~ crisis responders are specifically trained in adolescent ~~((chemical dependency))~~ substance use disorder issues, the ~~((chemical dependency))~~ substance use disorder commitment laws, and the criteria for commitment ~~((, as specified in this chapter and chapter 70.96A RCW))~~.

Sec. 1043. RCW 71.24.630 and 2018 c 201 s 4053 are each amended to read as follows:

(1) The authority shall maintain an integrated and comprehensive screening and assessment process for substance use and mental disorders and co-occurring substance use and mental disorders.

(a) The process adopted shall include, at a minimum:

(i) An initial screening tool that can be used by intake personnel system-wide and which will identify the most common types of co-occurring disorders;

(ii) An assessment process for those cases in which assessment is indicated that provides an appropriate degree

of assessment for most situations, which can be expanded for complex situations;

(iii) Identification of triggers in the screening that indicate the need to begin an assessment;

(iv) Identification of triggers after or outside the screening that indicate a need to begin or resume an assessment;

(v) The components of an assessment process and a protocol for determining whether part or all of the assessment is necessary, and at what point; and

(vi) Emphasis that the process adopted under this section is to replace and not to duplicate existing intake, screening, and assessment tools and processes.

(b) The authority shall consider existing models, including those already adopted by other states, and to the extent possible, adopt an established, proven model.

(c) The integrated, comprehensive screening and assessment process shall be implemented statewide by all substance use disorder and mental health treatment providers ~~((as well as all designated mental health professionals, designated chemical dependency specialists,))~~ and designated crisis responders.

(2) The authority shall provide for adequate training to effect statewide implementation ~~((by the dates designated in this section))~~ and, upon request, shall report the rates of co-occurring disorders the stage of screening or assessment at which the co-occurring disorder was identified to the appropriate committees of the legislature.

(3) The authority shall establish ~~((contractual penalties to contracted treatment providers, the behavioral health organizations, and their contracted providers for failure to))~~ performance-based contracts with managed care organizations and behavioral health administrative services organizations and implement the integrated screening and assessment process.

Sec. 1044. RCW 71.24.845 and 2014 c 225 s 46 are each amended to read as follows:

The ~~((behavioral health organizations shall jointly))~~ authority, in consultation with the established behavioral health administrative services organizations, shall develop a uniform transfer agreement to govern the transfer of clients between behavioral health administrative services organizations, taking into account the needs of the regional service area. ((By September 1, 2013, the behavioral health organizations shall submit the uniform transfer agreement to the department. By December 1, 2013, the department shall establish guidelines to implement the uniform transfer agreement and may modify the uniform transfer agreement as necessary to avoid impacts on state administrative systems.))

Sec. 1045. RCW 71.24.870 and 2017 c 207 s 2 are each amended to read as follows:

~~(1) ((Subject to the availability of amounts appropriated for this specific purpose, the department must immediately perform a review of its rules, policies, and procedures related to the documentation requirements for behavioral health services.))~~ Rules adopted by the department relating to the provision of behavioral health services must:

(a) Identify areas in which duplicative or inefficient documentation requirements can be eliminated or streamlined for providers;

(b) Limit prescriptive requirements for individual initial assessments to allow clinicians to exercise professional judgment to conduct age-appropriate, strength-based psychosocial assessments, including current needs and relevant history according to current best practices;

~~(c) ((By April 1, 2018, provide a single set of regulations for agencies to follow that provide mental health, substance use disorder, and co-occurring treatment services;~~

~~(d))~~ Exempt providers from duplicative state documentation requirements when the provider is following documentation requirements of an evidence-based, research-based, or state-mandated program that provides adequate protection for patient safety; and

~~((e))~~ (d) Be clear and not unduly burdensome in order to maximize the time available for the provision of care.

(2) Subject to the availability of amounts appropriated for this specific purpose, audits conducted by the department relating to provision of behavioral health services must:

(a) Rely on a sampling methodology to conduct reviews of personnel files and clinical records based on written guidelines established by the department that are consistent with the standards of other licensing and accrediting bodies;

(b) Treat organizations with multiple locations as a single entity. The department must not require annual visits at all locations operated by a single entity when a sample of records may be reviewed from a centralized location;

(c) Share audit results with behavioral health administrative services organizations and managed care organizations to assist with their review process and, when appropriate, take steps to coordinate and combine audit activities;

~~(d) ((Coordinate audit functions between the department and the department of health to combine audit activities into a single site visit and eliminate redundancies;~~

~~(e))~~ Not require information to be provided in particular documents or locations when the same information is included or demonstrated elsewhere in the clinical file, except where required by federal law; and

~~((f))~~ (e) Ensure that audits involving manualized programs such as wraparound with intensive services or other evidence or research-based programs are conducted to the extent practicable by personnel familiar with the program

model and in a manner consistent with the documentation requirements of the program.

NEW SECTION. Sec. 1046. A new section is added to chapter 71.24 RCW to read as follows:

(1) The authority shall contract with one or more behavioral health administrative services organizations to carry out the duties and responsibilities set forth in this chapter and chapter 71.05 RCW to provide crisis services to assigned regional service areas.

(2) For clients eligible for medical assistance under chapter 74.09 RCW, the authority shall contract with one or more managed care organizations as set forth in RCW 71.24.380 and 74.09.871 to provide medically necessary physical and behavioral health services.

NEW SECTION. Sec. 1047. A new section is added to chapter 71.24 RCW to read as follows:

(1) The legislature finds that ongoing coordination between state agencies, the counties, and the behavioral health administrative services organizations is necessary to coordinate the behavioral health system. To this end, the authority shall establish a committee to meet quarterly to address systemic issues.

(2) The committee established in subsection (1) of this section must be convened by the authority, meet quarterly, and include representatives from:

(a) The authority;

(b) The department of social and health services;

(c) The department;

(d) The office of the governor;

(e) One representative from the behavioral health administrative services organization per regional service area; and

(f) One county representative per regional service area.

PART 2

Sec. 2001. RCW 71.34.020 and 2018 c 201 s 5002 are each amended to read as follows:

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

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

(2) "Approved substance use disorder treatment program" means a program for minors with substance use disorders provided by a treatment program licensed or

certified by the department of health as meeting standards adopted under chapter 71.24 RCW.

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

(4) (~~"Chemical dependency" means:~~

~~(a) Alcoholism;~~

~~(b) Drug addiction; or~~

~~(c) Dependence on alcohol and one or more other psychoactive chemicals, as the context requires.~~

~~(5))~~ (5) "Chemical dependency professional" means a person certified as a chemical dependency professional by the department of health under chapter 18.205 RCW.

~~((6))~~ (5) "Child psychiatrist" means a person having a license as a physician and surgeon in this state, who has had graduate training in child psychiatry in a program approved by the American Medical Association or the American Osteopathic Association, and who is board eligible or board certified in child psychiatry.

~~((7))~~ (6) "Children's mental health specialist" means:

(a) A mental health professional who has completed a minimum of one hundred actual hours, not quarter or semester hours, of specialized training devoted to the study of child development and the treatment of children; and

(b) A mental health professional who has the equivalent of one year of full-time experience in the treatment of children under the supervision of a children's mental health specialist.

~~((8))~~ (7) "Commitment" means a determination by a judge or court commissioner, made after a commitment hearing, that the minor is in need of inpatient diagnosis, evaluation, or treatment or that the minor is in need of less restrictive alternative treatment.

~~((9))~~ (8) "Department" means the department of social and health services.

~~((10))~~ (9) "Designated crisis responder" (~~means a person designated by a behavioral health organization to perform the duties specified in this chapter~~) has the same meaning as provided in RCW 71.05.020.

~~((11))~~ (10) "Director" means the director of the authority.

~~((12) "Drug addiction" means a disease, characterized by a dependency on psychoactive chemicals, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning)~~ (11) "Behavioral health administrative services organization" has the same meaning as provided in RCW 71.24.025.

~~((13))~~ (12) "Evaluation and treatment facility" means a public or private facility or unit that is licensed or certified by the department of health to provide emergency,

inpatient, residential, or outpatient mental health evaluation and treatment services for minors. A physically separate and separately-operated portion of a state hospital may be designated as an evaluation and treatment facility for minors. A facility which is part of or operated by the state or federal agency does not require licensure or certification. No correctional institution or facility, juvenile court detention facility, or jail may be an evaluation and treatment facility within the meaning of this chapter.

~~((14))~~ (13) "Evaluation and treatment program" means the total system of services and facilities coordinated and approved by a county or combination of counties for the evaluation and treatment of minors under this chapter.

~~((15))~~ (14) "Gravely disabled minor" means a minor who, as a result of a mental disorder, or as a result of the use of alcohol or other psychoactive chemicals, is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety, or manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety.

~~((16))~~ (15) "Inpatient treatment" means twenty-four-hour-per-day mental health care provided within a general hospital, psychiatric hospital, residential treatment facility licensed or certified by the department of health as an evaluation and treatment facility for minors, secure detoxification facility for minors, or approved substance use disorder treatment program for minors.

~~((17))~~ (16) "Intoxicated minor" means a minor whose mental or physical functioning is substantially impaired as a result of the use of alcohol or other psychoactive chemicals.

~~((18))~~ (17) "Less restrictive alternative" or "less restrictive setting" means outpatient treatment provided to a minor who is not residing in a facility providing inpatient treatment as defined in this chapter.

~~((19))~~ (18) "Likelihood of serious harm" means either: (a) A substantial risk that physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others.

~~((20))~~ (19) "Medical necessity" for inpatient care means a requested service which is reasonably calculated to: (a) Diagnose, correct, cure, or alleviate a mental disorder or substance use disorder; or (b) prevent the progression of a mental disorder or substance use disorder that endangers life or causes suffering and pain, or results in illness or infirmity or threatens to cause or aggravate a handicap, or causes

physical deformity or malfunction, and there is no adequate less restrictive alternative available.

~~((21))~~ (20) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions. The presence of alcohol abuse, drug abuse, juvenile criminal history, antisocial behavior, or intellectual disabilities alone is insufficient to justify a finding of "mental disorder" within the meaning of this section.

~~((22))~~ (21) "Mental health professional" means a psychiatrist, psychiatric advanced registered nurse practitioner, physician assistant working with a supervising psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary of the department of health under this chapter.

~~((23))~~ (22) "Minor" means any person under the age of eighteen years.

~~((24))~~ (23) "Outpatient treatment" means any of the nonresidential services mandated under chapter 71.24 RCW and provided by licensed or certified ~~(service providers)~~ behavioral health agencies as identified by RCW 71.24.025.

~~((25))~~ (24) "Parent" means:

(a) A biological or adoptive parent who has legal custody of the child, including either parent if custody is shared under a joint custody agreement; or

(b) A person or agency judicially appointed as legal guardian or custodian of the child.

~~((26))~~ (25) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, that constitutes an evaluation and treatment facility or private institution, or hospital, or approved substance use disorder treatment program, that is conducted for, or includes a distinct unit, floor, or ward conducted for, the care and treatment of persons with mental illness, substance use disorders, or both mental illness and substance use disorders.

~~((27))~~ (26) "Physician assistant" means a person licensed as a physician assistant under chapter 18.57A or 18.71A RCW.

~~((28))~~ (27) "Professional person in charge" or "professional person" means a physician, other mental health professional, or other person empowered by an evaluation and treatment facility, secure detoxification facility, or approved substance use disorder treatment program with authority to make admission and discharge decisions on behalf of that facility.

~~((29))~~ (28) "Psychiatric nurse" means a registered nurse who has experience in the direct treatment of persons who have a mental illness or who are emotionally disturbed, such experience gained under the supervision of a mental health professional.

~~((30))~~ (29) "Psychiatrist" means a person having a license as a physician in this state who has completed

residency training in psychiatry in a program approved by the American Medical Association or the American Osteopathic Association, and is board eligible or board certified in psychiatry.

~~((31))~~ (30) "Psychologist" means a person licensed as a psychologist under chapter 18.83 RCW.

~~((32))~~ (31) "Public agency" means any evaluation and treatment facility or institution, or hospital, or approved substance use disorder treatment program that is conducted for, or includes a distinct unit, floor, or ward conducted for, the care and treatment of persons with mental illness, substance use disorders, or both mental illness and substance use disorders if the agency is operated directly by federal, state, county, or municipal government, or a combination of such governments.

~~((33))~~ (32) "Responsible other" means the minor, the minor's parent or estate, or any other person legally responsible for support of the minor.

~~((34))~~ (33) "Secretary" means the secretary of the department or secretary's designee.

~~((35))~~ (34) "Secure detoxification facility" means a facility operated by either a public or private agency or by the program of an agency that:

(a) Provides for intoxicated minors:

(i) Evaluation and assessment, provided by certified chemical dependency professionals;

(ii) Acute or subacute detoxification services; and

(iii) Discharge assistance provided by certified chemical dependency professionals, including facilitating transitions to appropriate voluntary or involuntary inpatient services or to less restrictive alternatives as appropriate for the minor;

(b) Includes security measures sufficient to protect the patients, staff, and community; and

(c) Is licensed or certified as such by the department of health.

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

~~((37))~~ (36) "Start of initial detention" means the time of arrival of the minor at the first evaluation and treatment facility, secure detoxification facility, or approved substance use disorder treatment program offering inpatient treatment if the minor is being involuntarily detained at the time. With regard to voluntary patients, "start of initial detention" means the time at which the minor gives notice of intent to leave under the provisions of this chapter.

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

pathological pattern of behaviors related to the use of the substances.

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

Sec. 2002. RCW 71.34.300 and 2018 c 201 s 5003 are each amended to read as follows:

~~((1))~~ The ~~((county or combination of counties))~~ authority is responsible for development and coordination of the evaluation and treatment program for minors ~~((for incorporating the program into the mental health plan.))~~ and for coordination of evaluation and treatment services and resources with the community ~~((mental))~~ behavioral health program required under chapter 71.24 RCW.

~~((2))~~ The county shall be responsible for maintaining its support of involuntary treatment services for minors at its 1984 level, adjusted for inflation, with the authority responsible for additional costs to the county resulting from this chapter. Maintenance of effort funds devoted to judicial services related to involuntary commitment reimbursed under RCW 71.05.730 must be expended for other purposes that further treatment for mental health and chemical dependency disorders.)

Sec. 2003. RCW 71.34.330 and 2014 c 225 s 89 are each amended to read as follows:

Attorneys appointed for minors under this chapter shall be compensated for their services as follows:

(1) Responsible others shall bear the costs of such legal services if financially able according to standards set by the court of the county in which the proceeding is held.

(2) If all responsible others are indigent as determined by these standards, the behavioral health administrative services organization shall reimburse the county in which the proceeding is held for the direct costs of such legal services, as provided in RCW 71.05.730.

Sec. 2004. RCW 71.34.379 and 2011 c 302 s 5 are each amended to read as follows:

~~((1) By December 1, 2011,))~~ Facilities licensed under chapter 70.41, 71.12, or 72.23 RCW are required to adopt policies and protocols regarding the notice requirements described in RCW 71.34.375 ~~((and~~

~~(2) By December 1, 2012, the department, in collaboration with the department of health, shall provide a detailed report to the legislature regarding the facilities' compliance with RCW 71.34.375 and subsection (1) of this section)).~~

Sec. 2005. RCW 71.34.385 and 2018 c 201 s 5007 are each amended to read as follows:

The authority shall ensure that the provisions of this chapter are applied ~~((by the counties))~~ in a consistent and

uniform manner. The authority shall also ensure that, to the extent possible within available funds, the designated crisis responders are specifically trained in adolescent mental health issues, the mental health and substance use disorder civil commitment laws, and the criteria for civil commitment.

Sec. 2006. RCW 71.34.415 and 2014 c 225 s 90 are each amended to read as follows:

A county may apply to its behavioral health administrative services organization for reimbursement of its direct costs in providing judicial services for civil commitment cases under this chapter, as provided in RCW 71.05.730.

Sec. 2007. RCW 71.34.670 and 2018 c 201 s 2001 are each amended to read as follows:

The authority shall adopt rules defining "appropriately trained professional person" operating within their scope of practice within Title 18 RCW for the purposes of conducting mental health and ~~((chemical dependency))~~ substance use disorder evaluations under RCW 71.34.600(3) and 71.34.650(1).

Sec. 2008. RCW 71.34.750 and 2016 sp.s. c 29 s 276 and 2016 c 155 s 21 are each reenacted and amended to read as follows:

(1) At any time during the minor's period of fourteen-day commitment, the professional person in charge may petition the court for an order requiring the minor to undergo an additional one hundred eighty-day period of treatment. The evidence in support of the petition shall be presented by the county prosecutor unless the petition is filed by the professional person in charge of a state-operated facility in which case the evidence shall be presented by the attorney general.

(2) The petition for one hundred eighty-day commitment shall contain the following:

(a) The name and address of the petitioner or petitioners;

(b) The name of the minor alleged to meet the criteria for one hundred eighty-day commitment;

(c) A statement that the petitioner is the professional person in charge of the evaluation and treatment facility, secure detoxification facility, or approved substance use disorder treatment program responsible for the treatment of the minor;

(d) The date of the fourteen-day commitment order; and

(e) A summary of the facts supporting the petition.

(3) The petition shall be supported by accompanying affidavits signed by: (a) Two examining physicians, one of whom shall be a child psychiatrist, or two psychiatric advanced registered nurse practitioners, one of whom shall

be a child and adolescent or family psychiatric advanced registered nurse practitioner, or two physician assistants, one of whom must be supervised by a child psychiatrist; (b) one children's mental health specialist and either an examining physician, physician assistant, or a psychiatric advanced registered nurse practitioner; or (c) two among an examining physician, physician assistant, and a psychiatric advanced registered nurse practitioner, one of which needs to be a child psychiatrist((~~†~~)), a physician assistant supervised by a child psychiatrist, or a child and adolescent psychiatric nurse practitioner. The affidavits shall describe in detail the behavior of the detained minor which supports the petition and shall state whether a less restrictive alternative to inpatient treatment is in the best interests of the minor.

(4) The petition for one hundred eighty-day commitment shall be filed with the clerk of the court at least three days before the expiration of the fourteen-day commitment period. The petitioner or the petitioner's designee shall within twenty-four hours of filing serve a copy of the petition on the minor and notify the minor's attorney and the minor's parent. A copy of the petition shall be provided to such persons at least twenty-four hours prior to the hearing.

(5) At the time of filing, the court shall set a date within seven days for the hearing on the petition. The court may continue the hearing upon the written request of the minor or the minor's attorney for not more than ten days. The minor or the parents shall be afforded the same rights as in a fourteen-day commitment hearing. Treatment of the minor shall continue pending the proceeding.

(6) For one hundred eighty-day commitment:

(a) The court must find by clear, cogent, and convincing evidence that the minor:

(i) Is suffering from a mental disorder or substance use disorder;

(ii) Presents a likelihood of serious harm or is gravely disabled; and

(iii) Is in need of further treatment that only can be provided in a one hundred eighty-day commitment.

(b) If commitment is for a substance use disorder, the court must find that there is an available approved substance use disorder treatment program that has adequate space for the minor.

(7) If the court finds that the criteria for commitment are met and that less restrictive treatment in a community setting is not appropriate or available, the court shall order the minor committed to the custody of the ((~~secretary~~)) director for further inpatient mental health treatment, to an approved substance use disorder treatment program for further substance use disorder treatment, or to a private treatment and evaluation facility for inpatient mental health or substance use disorder treatment if the minor's parents have assumed responsibility for payment for the treatment. If the court finds that a less restrictive alternative is in the best interest of the minor, the court shall order less restrictive alternative treatment upon such conditions as necessary.

If the court determines that the minor does not meet the criteria for one hundred eighty-day commitment, the minor shall be released.

(8) Successive one hundred eighty-day commitments are permissible on the same grounds and under the same procedures as the original one hundred eighty-day commitment. Such petitions shall be filed at least five days prior to the expiration of the previous one hundred eighty-day commitment order.

Sec. 2009. RCW 71.34.750 and 2016 sp.s. c 29 s 277 are each amended to read as follows:

(1) At any time during the minor's period of fourteen-day commitment, the professional person in charge may petition the court for an order requiring the minor to undergo an additional one hundred eighty-day period of treatment. The evidence in support of the petition shall be presented by the county prosecutor unless the petition is filed by the professional person in charge of a state-operated facility in which case the evidence shall be presented by the attorney general.

(2) The petition for one hundred eighty-day commitment shall contain the following:

(a) The name and address of the petitioner or petitioners;

(b) The name of the minor alleged to meet the criteria for one hundred eighty-day commitment;

(c) A statement that the petitioner is the professional person in charge of the evaluation and treatment facility, secure detoxification facility, or approved substance use disorder treatment program responsible for the treatment of the minor;

(d) The date of the fourteen-day commitment order; and

(e) A summary of the facts supporting the petition.

(3) The petition shall be supported by accompanying affidavits signed by: (a) Two examining physicians, one of whom shall be a child psychiatrist, or two psychiatric advanced registered nurse practitioners, one of whom shall be a child and adolescent or family psychiatric advanced registered nurse practitioner, or two physician assistants, one of whom must be supervised by a child psychiatrist; (b) one children's mental health specialist and either an examining physician, physician assistant, or a psychiatric advanced registered nurse practitioner; or (c) two among an examining physician, physician assistant, and a psychiatric advanced registered nurse practitioner, one of which needs to be a child psychiatrist((~~†~~)), a physician assistant supervised by a child psychiatrist, or a child and adolescent psychiatric nurse practitioner. The affidavits shall describe in detail the behavior of the detained minor which supports the petition and shall state whether a less restrictive alternative to inpatient treatment is in the best interests of the minor.

(4) The petition for one hundred eighty-day commitment shall be filed with the clerk of the court at least

three days before the expiration of the fourteen-day commitment period. The petitioner or the petitioner's designee shall within twenty-four hours of filing serve a copy of the petition on the minor and notify the minor's attorney and the minor's parent. A copy of the petition shall be provided to such persons at least twenty-four hours prior to the hearing.

(5) At the time of filing, the court shall set a date within seven days for the hearing on the petition. The court may continue the hearing upon the written request of the minor or the minor's attorney for not more than ten days. The minor or the parents shall be afforded the same rights as in a fourteen-day commitment hearing. Treatment of the minor shall continue pending the proceeding.

(6) For one hundred eighty-day commitment, the court must find by clear, cogent, and convincing evidence that the minor:

(a) Is suffering from a mental disorder or substance use disorder;

(b) Presents a likelihood of serious harm or is gravely disabled; and

(c) Is in need of further treatment that only can be provided in a one hundred eighty-day commitment.

(7) If the court finds that the criteria for commitment are met and that less restrictive treatment in a community setting is not appropriate or available, the court shall order the minor committed to the custody of the ~~((secretary))~~ director for further inpatient mental health treatment, to an approved substance use disorder treatment program for further substance use disorder treatment, or to a private treatment and evaluation facility for inpatient mental health or substance use disorder treatment if the minor's parents have assumed responsibility for payment for the treatment. If the court finds that a less restrictive alternative is in the best interest of the minor, the court shall order less restrictive alternative treatment upon such conditions as necessary.

If the court determines that the minor does not meet the criteria for one hundred eighty-day commitment, the minor shall be released.

(8) Successive one hundred eighty-day commitments are permissible on the same grounds and under the same procedures as the original one hundred eighty-day commitment. Such petitions shall be filed at least five days prior to the expiration of the previous one hundred eighty-day commitment order.

Sec. 2010. RCW 71.36.010 and 2018 c 201 s 5023 are each amended to read as follows:

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

(1) "Agency" means a state, tribal, or local governmental entity or a private not-for-profit organization.

(2) "Behavioral health administrative services organization" means ~~((a county authority or group of county authorities or other nonprofit entity that has entered into~~

~~contracts with the health care authority pursuant to))~~ an entity contracted with the health care authority to administer behavioral health services and programs under section 1046 of this act, including crisis services and administration of the involuntary treatment act, chapter 71.05 RCW, for all individuals in a defined regional service area under chapter 71.24 RCW.

(3) "Child" means a person under eighteen years of age, except as expressly provided otherwise in state or federal law.

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

(5) "County authority" means the board of county commissioners or county executive.

(6) "Early periodic screening, diagnosis, and treatment" means the component of the federal medicaid program established pursuant to 42 U.S.C. Sec. 1396d(r), as amended.

(7) "Evidence-based" means a program or practice that has had multiple site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective for the population.

(8) "Family" means a child's biological parents, adoptive parents, foster parents, guardian, legal custodian authorized pursuant to Title 26 RCW, a relative with whom a child has been placed by the department of social and health services, or a tribe.

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

~~((10))~~ (10) "Promising practice" or "emerging best practice" means a practice that presents, based upon preliminary information, potential for becoming a research-based or consensus-based practice.

~~((11))~~ (11) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

~~((12))~~ (12) "Wraparound process" means a family driven planning process designed to address the needs of children and youth by the formation of a team that empowers families to make key decisions regarding the care of the child or youth in partnership with professionals and the family's natural community supports. The team produces a community-based and culturally competent intervention plan which identifies the strengths and needs of the child or youth and family and defines goals that the team collaborates on achieving with respect for the unique cultural values of

the family. The "wraparound process" shall emphasize principles of persistence and outcome-based measurements of success.

Sec. 2011. RCW 71.36.025 and 2018 c 201 s 5024 are each amended to read as follows:

(1) It is the goal of the legislature that ~~((, by 2012,))~~ the children's mental health system in Washington state include the following elements:

(a) A continuum of services from early identification, intervention, and prevention through crisis intervention and inpatient treatment, including peer support and parent mentoring services;

(b) Equity in access to services for similarly situated children, including children with co-occurring disorders;

(c) Developmentally appropriate, high quality, and culturally competent services available statewide;

(d) Treatment of each child in the context of his or her family and other persons that are a source of support and stability in his or her life;

(e) A sufficient supply of qualified and culturally competent children's mental health providers;

(f) Use of developmentally appropriate evidence-based and research-based practices;

(g) Integrated and flexible services to meet the needs of children who, due to mental illness or emotional or behavioral disturbance, are at risk of out-of-home placement or involved with multiple child-serving systems.

(2) The effectiveness of the children's mental health system shall be determined through the use of outcome-based performance measures. The health care authority and the evidence-based practice institute established in RCW 71.24.061, in consultation with parents, caregivers, youth, behavioral health administrative services organizations, managed care organizations contracted with the authority under chapter 74.09 RCW, mental health services providers, health plans, primary care providers, tribes, and others, shall develop outcome-based performance measures such as:

(a) Decreased emergency room utilization;

(b) Decreased psychiatric hospitalization;

(c) Lessening of symptoms, as measured by commonly used assessment tools;

(d) Decreased out-of-home placement, including residential, group, and foster care, and increased stability of such placements, when necessary;

(e) Decreased runaways from home or residential placements;

(f) Decreased rates of ~~((chemical dependency))~~ substance use disorder;

(g) Decreased involvement with the juvenile justice system;

(h) Improved school attendance and performance;

(i) Reductions in school or child care suspensions or expulsions;

(j) Reductions in use of prescribed medication where cognitive behavioral therapies are indicated;

(k) Improved rates of high school graduation and employment; and

(l) Decreased use of mental health services upon reaching adulthood for mental disorders other than those that require ongoing treatment to maintain stability.

Performance measure reporting for children's mental health services should be integrated into existing performance measurement and reporting systems developed and implemented under chapter 71.24 RCW.

Sec. 2012. RCW 71.36.040 and 2018 c 201 s 5025 are each amended to read as follows:

(1) ~~((The legislature supports recommendations made in the August 2002 study of the public mental health system for children conducted by the joint legislative audit and review committee.~~

~~((2))~~ (2) The health care authority shall, within available funds:

(a) Identify internal business operation issues that limit the ~~((agency's))~~ authority's ability to meet legislative intent to coordinate existing categorical children's mental health programs and funding;

(b) Collect reliable mental health cost, service, and outcome data specific to children. This information must be used to identify best practices and methods of improving fiscal management;

(c) Revise the early and periodic screening diagnosis and treatment plan to reflect the mental health system structure in place ~~((on July 27, 2003, and thereafter revise the plan))~~ as necessary to conform to ~~((subsequent))~~ changes in the structure.

~~((3))~~ (2) The health care authority and the office of the superintendent of public instruction shall jointly identify school districts where mental health and education systems coordinate services and resources to provide public mental health care for children. The health care authority and the office of the superintendent of public instruction shall work together to share information about these approaches with other school districts, managed care organizations, behavioral health administrative services organizations, and state agencies.

PART 3

Sec. 3001. RCW 71.05.020 and 2018 c 305 s 1, 2018 c 291 s 1, and 2018 c 201 s 3001 are each reenacted and amended to read as follows:

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

(1) "Admission" or "admit" means a decision by a physician, physician assistant, or psychiatric advanced registered nurse practitioner that a person should be examined or treated as a patient in a hospital;

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

(3) "Antipsychotic medications" means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes, but is not limited to atypical antipsychotic medications;

(4) "Approved substance use disorder treatment program" means a program for persons with a substance use disorder provided by a treatment program certified by the department as meeting standards adopted under chapter 71.24 RCW;

(5) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient;

(6) "Authority" means the Washington state health care authority;

(7) ("~~Chemical dependency~~" means:

~~(a) Alcoholism;~~

~~(b) Drug addiction; or~~

~~(c) Dependence on alcohol and one or more psychoactive chemicals, as the context requires;~~

~~(8))~~ "Chemical dependency professional" means a person certified as a chemical dependency professional by the department under chapter 18.205 RCW;

~~((9))~~ (8) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting;

~~((10))~~ (9) "Conditional release" means a revocable modification of a commitment, which may be revoked upon violation of any of its terms;

~~((11))~~ (10) "Crisis stabilization unit" means a short-term facility or a portion of a facility licensed or certified by the department (~~under RCW 71.24.035~~), such as an evaluation and treatment facility or a hospital, which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization;

~~((12))~~ (11) "Custody" means involuntary detention under the provisions of this chapter or chapter 10.77 RCW, uninterrupted by any period of unconditional release from

commitment from a facility providing involuntary care and treatment;

~~((13))~~ (12) "Department" means the department of health;

~~((14))~~ (13) "Designated crisis responder" means a mental health professional appointed by the county (~~(7)~~) or an entity appointed by the county, (~~or the behavioral health organization~~) to perform the duties specified in this chapter;

~~((15))~~ (14) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter;

~~((16))~~ (15) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist, physician assistant working with a supervising psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, or social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary of the department of social and health services;

~~((17))~~ (16) "Developmental disability" means that condition defined in RCW 71A.10.020(5);

~~((18))~~ (17) "Director" means the director of the authority;

~~((19))~~ (18) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order;

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

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

~~((22))~~ (21) "Gravely disabled" means a condition in which a person, as a result of a mental disorder, or as a result of the use of alcohol or other psychoactive chemicals: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of

health or safety; or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety;

~~((23))~~ (22) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and in raising their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy. The habilitative process shall be undertaken with recognition of the risk to the public safety presented by the person being assisted as manifested by prior charged criminal conduct;

~~((24))~~ (23) "Hearing" means any proceeding conducted in open court. For purposes of this chapter, at any hearing the petitioner, the respondent, the witnesses, and the presiding judicial officer may be present and participate either in person or by video, as determined by the court. The term "video" as used herein shall include any functional equivalent. At any hearing conducted by video, the technology used must permit the judicial officer, counsel, all parties, and the witnesses to be able to see, hear, and speak, when authorized, during the hearing; to allow attorneys to use exhibits or other materials during the hearing; and to allow respondent's counsel to be in the same location as the respondent unless otherwise requested by the respondent or the respondent's counsel. Witnesses in a proceeding may also appear in court through other means, including telephonically, pursuant to the requirements of superior court civil rule 43. Notwithstanding the foregoing, the court, upon its own motion or upon a motion for good cause by any party, may require all parties and witnesses to participate in the hearing in person rather than by video. In ruling on any such motion, the court may allow in-person or video testimony; and the court may consider, among other things, whether the respondent's alleged mental illness affects the respondent's ability to perceive or participate in the proceeding by video;

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

~~((26))~~ (25) "Imminent" means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote;

~~((27))~~ (26) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for a person with developmental disabilities, which shall state:

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

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

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

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

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

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

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

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

~~((29))~~ (28) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or other psychoactive chemicals;

~~((30))~~ (29) "In need of assisted outpatient behavioral health treatment" means that a person, as a result of a mental disorder or substance use disorder: (a) Has been committed by a court to detention for involuntary behavioral health treatment during the preceding thirty-six months; (b) is unlikely to voluntarily participate in outpatient treatment without an order for less restrictive alternative treatment, based on a history of nonadherence with treatment or in view of the person's current behavior; (c) is likely to benefit from less restrictive alternative treatment; and (d) requires less restrictive alternative treatment to prevent a relapse, decompensation, or deterioration that is likely to result in the person presenting a likelihood of serious harm or the person becoming gravely disabled within a reasonably short period of time;

~~((31))~~ (30) "Judicial commitment" means a commitment by a court pursuant to the provisions of this chapter;

~~((32))~~ (31) "Legal counsel" means attorneys and staff employed by county prosecutor offices or the state attorney general acting in their capacity as legal representatives of public mental health and substance use disorder service providers under RCW 71.05.130;

~~((33))~~ (32) "Less restrictive alternative treatment" means a program of individualized treatment in a less restrictive setting than inpatient treatment that includes the services described in RCW 71.05.585;

~~((34))~~ (33) "Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington;

~~((35))~~ (34) "Likelihood of serious harm" means:

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

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

~~((36))~~ (35) "Medical clearance" means a physician or other health care provider has determined that a person is medically stable and ready for referral to the designated crisis responder;

~~((37))~~ (36) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on a person's cognitive or volitional functions;

~~((38))~~ (37) "Mental health professional" means a psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

~~((39))~~ (38) "Mental health service provider" means a public or private agency that provides mental health services to persons with mental disorders or substance use disorders as defined under this section and receives funding from public sources. This includes, but is not limited to, hospitals licensed under chapter 70.41 RCW, evaluation and treatment facilities as defined in this section, community mental health service delivery systems or community behavioral health programs as defined in RCW 71.24.025, facilities conducting competency evaluations and restoration under chapter 10.77 RCW, approved substance use disorder treatment programs as defined in this section, secure detoxification facilities as defined in this section, and correctional facilities operated by state and local governments;

~~((40))~~ (39) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment;

~~((41))~~ (40) "Physician assistant" means a person licensed as a physician assistant under chapter 18.57A or 18.71A RCW;

~~((42))~~ (41) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, which constitutes an evaluation and treatment facility or private institution, or hospital, or approved substance use disorder treatment program, which is conducted for, or includes a department or ward conducted for, the care and

treatment of persons with mental illness, substance use disorders, or both mental illness and substance use disorders;

~~((43))~~ (42) "Professional person" means a mental health professional, chemical dependency professional, or designated crisis responder and shall also mean a physician, physician assistant, psychiatric advanced registered nurse practitioner, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

~~((44))~~ (43) "Psychiatric advanced registered nurse practitioner" means a person who is licensed as an advanced registered nurse practitioner pursuant to chapter 18.79 RCW; and who is board certified in advanced practice psychiatric and mental health nursing;

~~((45))~~ (44) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology;

~~((46))~~ (45) "Psychologist" means a person who has been licensed as a psychologist pursuant to chapter 18.83 RCW;

~~((47))~~ (46) "Public agency" means any evaluation and treatment facility or institution, secure detoxification facility, approved substance use disorder treatment program, or hospital which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with mental illness, substance use disorders, or both mental illness and substance use disorders, if the agency is operated directly by federal, state, county, or municipal government, or a combination of such governments;

~~((48))~~ (47) "Release" means legal termination of the commitment under the provisions of this chapter;

~~((49))~~ (48) "Resource management services" has the meaning given in chapter 71.24 RCW;

~~((50))~~ (49) "Secretary" means the secretary of the department of health, or his or her designee;

~~((51))~~ (50) "Secure detoxification facility" means a facility operated by either a public or private agency or by the program of an agency that:

(a) Provides for intoxicated persons:

(i) Evaluation and assessment, provided by certified chemical dependency professionals;

(ii) Acute or subacute detoxification services; and

(iii) Discharge assistance provided by certified chemical dependency professionals, including facilitating transitions to appropriate voluntary or involuntary inpatient services or to less restrictive alternatives as appropriate for the individual;

(b) Includes security measures sufficient to protect the patients, staff, and community; and

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

~~((52))~~ (51) "Serious violent offense" has the same meaning as provided in RCW 9.94A.030;

~~((53))~~ (52) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010;

~~((54))~~ (53) "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms indicating that an individual continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances;

~~((55))~~ (54) "Therapeutic court personnel" means the staff of a mental health court or other therapeutic court which has jurisdiction over defendants who are dually diagnosed with mental disorders, including court personnel, probation officers, a court monitor, prosecuting attorney, or defense counsel acting within the scope of therapeutic court duties;

~~((56))~~ (55) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department of social and health services, the department, the authority, behavioral health administrative services organizations and their staffs, managed care organizations and their staffs, and by treatment facilities. Treatment records include mental health information contained in a medical bill including but not limited to mental health drugs, a mental health diagnosis, provider name, and dates of service stemming from a medical service. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department of social and health services, the department, the authority, behavioral health administrative services organizations, managed care organizations, or a treatment facility if the notes or records are not available to others;

~~((57))~~ (56) "Triage facility" means a short-term facility or a portion of a facility licensed or certified by the department (~~under RCW 71.24.035~~), which is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual, and must meet department residential treatment facility standards. A triage facility may be structured as a voluntary or involuntary placement facility;

~~((58))~~ (57) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property.

Sec. 3002. RCW 71.05.025 and 2016 sp.s. c 29 s 205 are each amended to read as follows:

The legislature intends that the procedures and services authorized in this chapter be integrated with those in chapter 71.24 RCW to the maximum extent necessary to

assure a continuum of care to persons with mental illness or who have mental disorders or substance use disorders, as defined in either or both this chapter and chapter 71.24 RCW. To this end, behavioral health administrative services organizations established in accordance with chapter 71.24 RCW shall institute procedures which require timely consultation with resource management services by designated crisis responders, managed care organizations, evaluation and treatment facilities, secure detoxification facilities, and approved substance use disorder treatment programs to assure that determinations to admit, detain, commit, treat, discharge, or release persons with mental disorders or substance use disorders under this chapter are made only after appropriate information regarding such person's treatment history and current treatment plan has been sought from resource management services.

Sec. 3003. RCW 71.05.026 and 2018 c 201 s 3002 are each amended to read as follows:

(1) Except for monetary damage claims which have been reduced to final judgment by a superior court, this section applies to all claims against the state, state agencies, state officials, or state employees that exist on or arise after March 29, 2006.

(2) Except as expressly provided in contracts entered into by ~~(between)~~ the authority (~~and the behavioral health organizations after March 29, 2006~~), the entities identified in subsection (3) of this section shall have no claim for declaratory relief, injunctive relief, judicial review under chapter 34.05 RCW, or civil liability against the state or state agencies for actions or inactions performed pursuant to the administration of this chapter with regard to the following: (a) The allocation or payment of federal or state funds; (b) the use or allocation of state hospital beds; or (c) financial responsibility for the provision of inpatient mental health care or inpatient substance use disorder treatment.

(3) This section applies to counties, behavioral health administrative services organizations, managed care organizations, and entities which contract to provide behavioral health (~~organization~~) services and their subcontractors, agents, or employees.

Sec. 3004. RCW 71.05.027 and 2018 c 201 s 3003 are each amended to read as follows:

~~((1) Not later than January 1, 2007,)~~ All persons providing treatment under this chapter shall also ~~((implement the))~~ provide an integrated comprehensive screening and assessment process for ~~((chemical dependency))~~ substance use disorders and mental disorders adopted pursuant to RCW 71.24.630 ~~((and shall document the numbers of clients with co-occurring mental and substance abuse disorders based on a quadrant system of low and high needs))~~.

~~((2) Treatment providers and behavioral health organizations who fail to implement the integrated comprehensive screening and assessment process for chemical dependency and mental disorders by July 1, 2007,~~

~~shall be subject to contractual penalties established under RCW 71.24.630.)~~

Sec. 3005. RCW 71.05.110 and 2014 c 225 s 83 are each amended to read as follows:

Attorneys appointed for persons pursuant to this chapter shall be compensated for their services as follows: (1) The person for whom an attorney is appointed shall, if he or she is financially able pursuant to standards as to financial capability and indigency set by the superior court of the county in which the proceeding is held, bear the costs of such legal services; (2) if such person is indigent pursuant to such standards, the behavioral health administrative services organization shall reimburse the county in which the proceeding is held for the direct costs of such legal services, as provided in RCW 71.05.730.

Sec. 3006. RCW 71.05.203 and 2018 c 201 s 3006 are each amended to read as follows:

(1) The authority and each behavioral health administrative services organization or agency employing designated crisis responders shall publish information in an easily accessible format describing the process for an immediate family member, guardian, or conservator to petition for court review of a detention decision under RCW 71.05.201.

(2) A designated crisis responder or designated crisis responder agency that receives a request for investigation for possible detention under this chapter must inquire whether the request comes from an immediate family member, guardian, or conservator who would be eligible to petition under RCW 71.05.201. If the designated crisis responder decides not to detain the person for evaluation and treatment under RCW 71.05.150 or 71.05.153 or forty-eight hours have elapsed since the request for investigation was received and the designated crisis responder has not taken action to have the person detained, the designated crisis responder or designated crisis responder agency must inform the immediate family member, guardian, or conservator who made the request for investigation about the process to petition for court review under RCW 71.05.201 and, to the extent feasible, provide the immediate family member, guardian, or conservator with written or electronic information about the petition process. If provision of written or electronic information is not feasible, the designated crisis responder or designated crisis responder agency must refer the immediate family member, guardian, or conservator to a web site where published information on the petition process may be accessed. The designated crisis responder or designated crisis responder agency must document the manner and date on which the information required under this subsection was provided to the immediate family member, guardian, or conservator.

(3) A designated crisis responder or designated crisis responder agency must, upon request, disclose the date of a designated crisis responder investigation under this chapter to an immediate family member, guardian, or conservator of

a person to assist in the preparation of a petition under RCW 71.05.201.

Sec. 3007. RCW 71.05.300 and 2017 3rd sp.s. c 14 s 19 are each amended to read as follows:

(1) The petition for ninety day treatment shall be filed with the clerk of the superior court at least three days before expiration of the fourteen-day period of intensive treatment. At the time of filing such petition, the clerk shall set a time for the person to come before the court on the next judicial day after the day of filing unless such appearance is waived by the person's attorney, and the clerk shall notify the designated crisis responder. The designated crisis responder shall immediately notify the person detained, his or her attorney, if any, and his or her guardian or conservator, if any, the prosecuting attorney, and the behavioral health administrative services organization administrator, and provide a copy of the petition to such persons as soon as possible. The behavioral health administrative services organization administrator or designee may review the petition and may appear and testify at the full hearing on the petition.

(2) At the time set for appearance the detained person shall be brought before the court, unless such appearance has been waived and the court shall advise him or her of his or her right to be represented by an attorney, his or her right to a jury trial, and, if the petition is for commitment for mental health treatment, his or her loss of firearm rights if involuntarily committed. If the detained person is not represented by an attorney, or is indigent or is unwilling to retain an attorney, the court shall immediately appoint an attorney to represent him or her. The court shall, if requested, appoint a reasonably available licensed physician, physician assistant, psychiatric advanced registered nurse practitioner, psychologist, psychiatrist, or other professional person, designated by the detained person to examine and testify on behalf of the detained person.

(3) The court may, if requested, also appoint a professional person as defined in RCW 71.05.020 to seek less restrictive alternative courses of treatment and to testify on behalf of the detained person. In the case of a person with a developmental disability who has been determined to be incompetent pursuant to RCW 10.77.086(4), then the appointed professional person under this section shall be a developmental disabilities professional.

(4) The court shall also set a date for a full hearing on the petition as provided in RCW 71.05.310.

Sec. 3008. RCW 71.05.365 and 2016 sp.s. c 37 s 15 are each amended to read as follows:

When a person has been involuntarily committed for treatment to a hospital for a period of ninety or one hundred eighty days, and the superintendent or professional person in charge of the hospital determines that the person no longer requires active psychiatric treatment at an inpatient level of care, the behavioral health administrative services organization, ~~((full integration entity under RCW~~

71.24.380)) managed care organization, or agency providing oversight of long-term care or developmental disability services that is responsible for resource management services for the person must work with the hospital to develop an individualized discharge plan and arrange for a transition to the community in accordance with the person's individualized discharge plan within fourteen days of the determination.

Sec. 3009. RCW 71.05.445 and 2018 c 201 s 3021 are each amended to read as follows:

(1)(a) When a mental health service provider conducts its initial assessment for a person receiving court-ordered treatment, the service provider shall inquire and shall be told by the offender whether he or she is subject to supervision by the department of corrections.

(b) When a person receiving court-ordered treatment or treatment ordered by the department of corrections discloses to his or her mental health service provider that he or she is subject to supervision by the department of corrections, the mental health service provider shall notify the department of corrections that he or she is treating the offender and shall notify the offender that his or her community corrections officer will be notified of the treatment, provided that if the offender has received relief from disclosure pursuant to RCW 9.94A.562 or 71.05.132 and the offender has provided the mental health service provider with a copy of the order granting relief from disclosure pursuant to RCW 9.94A.562 or 71.05.132, the mental health service provider is not required to notify the department of corrections that the mental health service provider is treating the offender. The notification may be written or oral and shall not require the consent of the offender. If an oral notification is made, it must be confirmed by a written notification. For purposes of this section, a written notification includes notification by email or facsimile, so long as the notifying mental health service provider is clearly identified.

(2) The information to be released to the department of corrections shall include all relevant records and reports, as defined by rule, necessary for the department of corrections to carry out its duties.

(3) The authority and the department of corrections, in consultation with behavioral health administrative services organizations, managed care organizations, mental health service providers as defined in RCW 71.05.020, mental health consumers, and advocates for persons with mental illness, shall adopt rules to implement the provisions of this section related to the type and scope of information to be released. These rules shall:

(a) Enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A or 9.95 RCW, including accessing and releasing or disclosing information of persons who received mental health services as a minor; and

(b) Establish requirements for the notification of persons under the supervision of the department of corrections regarding the provisions of this section.

(4) The information received by the department of corrections under this section shall remain confidential and subject to the limitations on disclosure outlined in this chapter, except as provided in RCW 72.09.585.

(5) No mental health service provider or individual employed by a mental health service provider shall be held responsible for information released to or used by the department of corrections under the provisions of this section or rules adopted under this section.

(6) Whenever federal law or federal regulations restrict the release of information and records related to mental health services for any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

(7) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under chapter 70.24 RCW.

(8) The authority shall, subject to available resources, electronically, or by the most cost-effective means available, provide the department of corrections with the names, last dates of services, and addresses of specific behavioral health administrative services organizations, managed care organizations, and mental health service providers that delivered mental health services to a person subject to chapter 9.94A or 9.95 RCW pursuant to an agreement between the authority and the department of corrections.

Sec. 3010. RCW 71.05.458 and 2016 c 158 s 5 are each amended to read as follows:

As soon as possible, but no later than twenty-four hours from receiving a referral from a law enforcement officer or law enforcement agency, excluding Saturdays, Sundays, and holidays, a mental health professional contacted by the designated ~~((mental health professional))~~ crisis responder agency must attempt to contact the referred person to determine whether additional mental health intervention is necessary, including, if needed, an assessment by a designated ~~((mental health professional))~~ crisis responder for initial detention under RCW 71.05.150 or 71.05.153. Documentation of the mental health professional's attempt to contact and assess the person must be maintained by the designated ~~((mental health professional))~~ crisis responder agency.

Sec. 3011. RCW 71.05.730 and 2015 c 250 s 15 are each amended to read as follows:

(1) A county may apply to its behavioral health administrative services organization on a quarterly basis for reimbursement of its direct costs in providing judicial services for civil commitment cases under this chapter and chapter 71.34 RCW. The behavioral health administrative

services organization shall in turn be entitled to reimbursement from the behavioral health administrative services organization that serves the county of residence of the individual who is the subject of the civil commitment case. ~~((Reimbursements under this section shall be paid out of the behavioral health organization's nonmedicaid appropriation.))~~

(2) Reimbursement for judicial services shall be provided per civil commitment case at a rate to be determined based on an independent assessment of the county's actual direct costs. This assessment must be based on an average of the expenditures for judicial services within the county over the past three years. In the event that a baseline cannot be established because there is no significant history of similar cases within the county, the reimbursement rate shall be equal to eighty percent of the median reimbursement rate of counties included in the independent assessment.

(3) For the purposes of this section:

(a) "Civil commitment case" includes all judicial hearings related to a single episode of hospitalization or less restrictive alternative treatment, except that the filing of a petition for a one hundred eighty-day commitment under this chapter or a petition for a successive one hundred eighty-day commitment under chapter 71.34 RCW shall be considered to be a new case regardless of whether there has been a break in detention. "Civil commitment case" does not include the filing of a petition for a one hundred eighty-day commitment under this chapter on behalf of a patient at a state psychiatric hospital.

(b) "Judicial services" means a county's reasonable direct costs in providing prosecutor services, assigned counsel and defense services, court services, and court clerk services for civil commitment cases under this chapter and chapter 71.34 RCW.

(4) To the extent that resources have a shared purpose, the behavioral health administrative services organization may only reimburse counties to the extent such resources are necessary for and devoted to judicial services as described in this section.

(5) No filing fee may be charged or collected for any civil commitment case subject to reimbursement under this section.

Sec. 3012. RCW 71.05.740 and 2018 c 201 s 3031 are each amended to read as follows:

All behavioral health administrative services organizations in the state of Washington must forward historical mental health involuntary commitment information retained by the organization, including identifying information and dates of commitment to the authority. As soon as feasible, the behavioral health administrative services organizations must arrange to report new commitment data to the authority within twenty-four hours. Commitment information under this section does not need to be resent if it is already in the possession of the authority. Behavioral health administrative services

organizations and the authority shall be immune from liability related to the sharing of commitment information under this section.

Sec. 3013. RCW 71.05.750 and 2018 c 201 s 3033 are each amended to read as follows:

(1) A designated crisis responder shall make a report to the authority when he or she determines a person meets detention criteria under RCW 71.05.150, 71.05.153, 71.34.700, or 71.34.710 and there are not any beds available at an evaluation and treatment facility, the person has not been provisionally accepted for admission by a facility, and the person cannot be served on a single bed certification or less restrictive alternative. Starting at the time when the designated crisis responder determines a person meets detention criteria and the investigation has been completed, the designated crisis responder has twenty-four hours to submit a completed report to the authority.

(2) The report required under subsection (1) of this section must contain at a minimum:

(a) The date and time that the investigation was completed;

(b) The identity of the responsible behavioral health administrative services organization and managed care organization, if applicable;

(c) The county in which the person met detention criteria;

(d) A list of facilities which refused to admit the person; and

(e) Identifying information for the person, including age or date of birth.

(3) The authority shall develop a standardized reporting form or modify the current form used for single bed certifications for the report required under subsection (2) of this section and may require additional reporting elements as it determines are necessary or supportive. The authority shall also determine the method for the transmission of the completed report from the designated crisis responder to the authority.

(4) The authority shall create quarterly reports displayed on its web site that summarize the information reported under subsection (2) of this section. At a minimum, the reports must display data by county and by month. The reports must also include the number of single bed certifications granted by category. The categories must include all of the reasons that the authority recognizes for issuing a single bed certification, as identified in rule.

(5) The reports provided according to this section may not display "protected health information" as that term is used in the federal health insurance portability and accountability act of 1996, nor information contained in "mental health treatment records" as that term is used in chapter 70.02 RCW or elsewhere in state law, and must otherwise be compliant with state and federal privacy laws.

(6) For purposes of this section, the term "single bed certification" means a situation in which an adult on a seventy-two hour detention, fourteen-day commitment, ninety-day commitment, or one hundred eighty-day commitment is detained to a facility that is:

(a) Not licensed or certified as an inpatient evaluation and treatment facility; or

(b) A licensed or certified inpatient evaluation and treatment facility that is already at capacity.

Sec. 3014. RCW 71.05.755 and 2018 c 201 s 3034 are each amended to read as follows:

(1) The authority shall promptly share reports it receives under RCW 71.05.750 with the responsible ~~((regional support network or))~~ behavioral health administrative services organization or managed care organization, if applicable. The ~~((regional support network or))~~ behavioral health administrative services organization or managed care organization, if applicable. receiving this notification must attempt to engage the person in appropriate services for which the person is eligible and report back within seven days to the authority.

(2) The authority shall track and analyze reports submitted under RCW 71.05.750. The authority must initiate corrective action when appropriate to ensure that each ~~((regional support network or))~~ behavioral health administrative services organization or managed care organization, if applicable, has implemented an adequate plan to provide evaluation and treatment services. Corrective actions may include remedies under ~~((RCW 71.24.330 and 74.09.871, including requiring expenditure of reserve funds))~~ the authority's contract with such entity. An adequate plan may include development of less restrictive alternatives to involuntary commitment such as crisis triage, crisis diversion, voluntary treatment, or prevention programs reasonably calculated to reduce demand for evaluation and treatment under this chapter.

Sec. 3015. RCW 71.05.760 and 2018 c 201 s 3035 are each amended to read as follows:

(1)(a) ~~((By April 1, 2018, the authority, by rule, must combine the functions of a designated mental health professional and designated chemical dependency specialist by establishing a designated crisis responder who is authorized to conduct investigations, detain persons up to seventy two hours to the proper facility, and carry out the other functions identified in this chapter and chapter 71.34 RCW.))~~ The ~~((behavioral health organizations))~~ authority or its designee shall provide training to the designated crisis responders ~~((as required by the authority)).~~

(b)(i) To qualify as a designated crisis responder, a person must have received ~~((chemical dependency))~~ substance use disorder training as determined by the ~~((department))~~ authority and be a:

(A) Psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or social worker;

(B) Person who is licensed by the department as a mental health counselor or mental health counselor associate, or marriage and family therapist or marriage and family therapist associate;

(C) Person with a master's degree or further advanced degree in counseling or one of the social sciences from an accredited college or university and who have, in addition, at least two years of experience in direct treatment of persons with mental illness or emotional disturbance, such experience gained under the direction of a mental health professional;

(D) Person who meets the waiver criteria of RCW 71.24.260, which waiver was granted before 1986;

(E) Person who had an approved waiver to perform the duties of a mental health professional that was requested by the regional support network and granted by the department of social and health services before July 1, 2001; or

(F) Person who has been granted an exception of the minimum requirements of a mental health professional by the department consistent with rules adopted by the secretary.

(ii) Training must include ~~((chemical dependency))~~ training specific to the duties of a designated crisis responder, including diagnosis of substance abuse and dependence and assessment of risk associated with substance use.

~~((c) The authority must develop a transition process for any person who has been designated as a designated mental health professional or a designated chemical dependency specialist before April 1, 2018, to be converted to a designated crisis responder. The behavioral health organizations shall provide training, as required by the authority, to persons converting to designated crisis responders, which must include both mental health and chemical dependency training applicable to the designated crisis responder role.))~~

(2)(a) The authority must ensure that at least one sixteen-bed secure detoxification facility is operational by April 1, 2018, and that at least two sixteen-bed secure detoxification facilities are operational by April 1, 2019.

(b) If, at any time during the implementation of secure detoxification facility capacity, federal funding becomes unavailable for federal match for services provided in secure detoxification facilities, then the authority must cease any expansion of secure detoxification facilities until further direction is provided by the legislature.

PART 4

Sec. 4001. RCW 74.09.337 and 2017 c 226 s 4 are each amended to read as follows:

(1) For children who are eligible for medical assistance and who have been identified as requiring mental health treatment, the authority must oversee the coordination of resources and services through (a) the managed health care system as defined in RCW 74.09.325 and (b) tribal organizations providing health care services. The authority must ensure the child receives treatment and appropriate care based on their assessed needs, regardless of whether the referral occurred through primary care, school-based services, or another practitioner.

(2) The authority must require each managed health care system as defined in RCW 74.09.325 (~~and each behavioral health organization~~) to develop and maintain adequate capacity to facilitate child mental health treatment services in the community (~~or transfers to a behavioral health organization, depending on the level of required care~~). Managed health care systems (~~and behavioral health organizations~~) must:

(a) Follow up with individuals to ensure an appointment has been secured;

(b) Coordinate with and report back to primary care provider offices on individual treatment plans and medication management, in accordance with patient confidentiality laws;

(c) Provide information to health plan members and primary care providers about the behavioral health resource line available twenty-four hours a day, seven days a week; and

(d) Maintain an accurate list of providers contracted to provide mental health services to children and youth. The list must contain current information regarding the providers' availability to provide services. The current list must be made available to health plan members and primary care providers.

(3) This section expires June 30, 2020.

Sec. 4002. RCW 74.09.495 and 2018 c 175 s 3 are each amended to read as follows:

(1) To better assure and understand issues related to network adequacy and access to services, the authority (~~and the department~~) shall report to the appropriate committees of the legislature by December 1, 2017, and annually thereafter, on the status of access to behavioral health services for children (~~from~~) from birth through age seventeen using data collected pursuant to RCW 70.320.050.

(2) At a minimum, the report must include the following components broken down by age, gender, and race and ethnicity:

(a) The percentage of discharges for patients ages six through seventeen who had a visit to the emergency room with a primary diagnosis of mental health or alcohol or other drug dependence during the measuring year and who had a follow-up visit with any provider with a corresponding primary diagnosis of mental health or alcohol or other drug dependence within thirty days of discharge;

(b) The percentage of health plan members with an identified mental health need who received mental health services during the reporting period;

(c) The percentage of children served by behavioral health administrative services organizations and managed care organizations, including the types of services provided;

(d) The number of children's mental health providers available in the previous year, the languages spoken by those providers, and the overall percentage of children's mental health providers who were actively accepting new patients; and

(e) Data related to mental health and medical services for eating disorder treatment in children and youth by county, including the number of:

(i) Eating disorder diagnoses;

(ii) Patients treated in outpatient, residential, emergency, and inpatient care settings; and

(iii) Contracted providers specializing in eating disorder treatment and the overall percentage of those providers who were actively accepting new patients during the reporting period.

Sec. 4003. RCW 74.09.515 and 2014 c 225 s 100 are each amended to read as follows:

(1) The authority shall adopt rules and policies providing that when youth who were enrolled in a medical assistance program immediately prior to confinement are released from confinement, their medical assistance coverage will be fully reinstated on the day of their release, subject to any expedited review of their continued eligibility for medical assistance coverage that is required under federal or state law.

(2) The authority, in collaboration with the department, county juvenile court administrators, managed care organizations, the department of children, youth, and families, and behavioral health administrative services organizations, shall establish procedures for coordination (~~between department~~) among field offices, juvenile rehabilitation (~~administration~~) institutions, and county juvenile courts that result in prompt reinstatement of eligibility and speedy eligibility determinations for youth who are likely to be eligible for medical assistance services upon release from confinement. Procedures developed under this subsection must address:

(a) Mechanisms for receiving medical assistance services' applications on behalf of confined youth in anticipation of their release from confinement;

(b) Expedient review of applications filed by or on behalf of confined youth and, to the extent practicable, completion of the review before the youth is released; and

(c) Mechanisms for providing medical assistance services' identity cards to youth eligible for medical assistance services immediately upon their release from confinement.

(3) For purposes of this section, "confined" or "confinement" means detained in a juvenile rehabilitation facility operated by or under contract with the department of ~~((social and health services, juvenile rehabilitation administration))~~ children, youth, and families, or detained in a juvenile detention facility operated under chapter 13.04 RCW.

(4) The authority shall adopt standardized statewide screening and application practices and forms designed to facilitate the application of a confined youth who is likely to be eligible for a medical assistance program.

Sec. 4004. RCW 74.09.522 and 2018 c 201 s 7017 are each amended to read as follows:

(1) For the purposes of this section:

(a) "Managed health care system" means any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, health insuring organizations, or any combination thereof, that provides directly or by contract health care services covered under this chapter or other applicable law and rendered by licensed providers, on a prepaid capitated basis and that meets the requirements of section 1903(m)(1)(A) of Title XIX of the federal social security act or federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act;

(b) "Nonparticipating provider" means a person, health care provider, practitioner, facility, or entity, acting within their scope of practice, that does not have a written contract to participate in a managed health care system's provider network, but provides health care services to enrollees of programs authorized under this chapter or other applicable law whose health care services are provided by the managed health care system.

(2) The authority shall enter into agreements with managed health care systems to provide health care services to recipients of ~~((temporary assistance for needy families))~~ medicaid under the following conditions:

(a) Agreements shall be made for at least thirty thousand recipients statewide;

(b) Agreements in at least one county shall include enrollment of all recipients of ~~((temporary assistance for needy families))~~ programs as allowed for in the approved state plan amendment or federal waiver for Washington state's medicaid program;

(c) To the extent that this provision is consistent with section 1903(m) of Title XIX of the federal social security act or federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act, recipients shall have a choice of systems in which to enroll and shall have the right to terminate their enrollment in a system: PROVIDED, That the authority may limit recipient termination of enrollment without cause to the first month of a period of enrollment, which period shall not exceed twelve months: AND PROVIDED FURTHER, That the authority shall not restrict a recipient's right to terminate enrollment in

a system for good cause as established by the authority by rule;

(d) To the extent that this provision is consistent with section 1903(m) of Title XIX of the federal social security act, participating managed health care systems shall not enroll a disproportionate number of medical assistance recipients within the total numbers of persons served by the managed health care systems, except as authorized by the authority under federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act;

(e)(i) In negotiating with managed health care systems the authority shall adopt a uniform procedure to enter into contractual arrangements ~~((to be included in contracts issued or renewed on or after January 1, 2015))~~, including:

(A) Standards regarding the quality of services to be provided;

(B) The financial integrity of the responding system;

(C) Provider reimbursement methods that incentivize chronic care management within health homes, including comprehensive medication management services for patients with multiple chronic conditions consistent with the findings and goals established in RCW 74.09.5223;

(D) Provider reimbursement methods that reward health homes that, by using chronic care management, reduce emergency department and inpatient use;

(E) Promoting provider participation in the program of training and technical assistance regarding care of people with chronic conditions described in RCW 43.70.533, including allocation of funds to support provider participation in the training, unless the managed care system is an integrated health delivery system that has programs in place for chronic care management;

(F) Provider reimbursement methods within the medical billing processes that incentivize pharmacists or other qualified providers licensed in Washington state to provide comprehensive medication management services consistent with the findings and goals established in RCW 74.09.5223;

(G) Evaluation and reporting on the impact of comprehensive medication management services on patient clinical outcomes and total health care costs, including reductions in emergency department utilization, hospitalization, and drug costs; and

(H) Established consistent processes to incentivize integration of behavioral health services in the primary care setting, promoting care that is integrated, collaborative, colocated, and preventive.

(ii)(A) Health home services contracted for under this subsection may be prioritized to enrollees with complex, high cost, or multiple chronic conditions.

(B) Contracts that include the items in (e)(i)(C) through (G) of this subsection must not exceed the rates that would be paid in the absence of these provisions;

(f) The authority shall seek waivers from federal requirements as necessary to implement this chapter;

(g) The authority shall, wherever possible, enter into prepaid capitation contracts that include inpatient care. However, if this is not possible or feasible, the authority may enter into prepaid capitation contracts that do not include inpatient care;

(h) The authority shall define those circumstances under which a managed health care system is responsible for out-of-plan services and assure that recipients shall not be charged for such services;

(i) Nothing in this section prevents the authority from entering into similar agreements for other groups of people eligible to receive services under this chapter; and

(j) The authority must consult with the federal center for medicare and medicaid innovation and seek funding opportunities to support health homes.

(3) The authority shall ensure that publicly supported community health centers and providers in rural areas, who show serious intent and apparent capability to participate as managed health care systems are seriously considered as contractors. The authority shall coordinate its managed care activities with activities under chapter 70.47 RCW.

(4) The authority shall work jointly with the state of Oregon and other states in this geographical region in order to develop recommendations to be presented to the appropriate federal agencies and the United States congress for improving health care of the poor, while controlling related costs.

(5) The legislature finds that competition in the managed health care marketplace is enhanced, in the long term, by the existence of a large number of managed health care system options for medicaid clients. In a managed care delivery system, whose goal is to focus on prevention, primary care, and improved enrollee health status, continuity in care relationships is of substantial importance, and disruption to clients and health care providers should be minimized. To help ensure these goals are met, the following principles shall guide the authority in its healthy options managed health care purchasing efforts:

(a) All managed health care systems should have an opportunity to contract with the authority to the extent that minimum contracting requirements defined by the authority are met, at payment rates that enable the authority to operate as far below appropriated spending levels as possible, consistent with the principles established in this section.

(b) Managed health care systems should compete for the award of contracts and assignment of medicaid beneficiaries who do not voluntarily select a contracting system, based upon:

(i) Demonstrated commitment to or experience in serving low-income populations;

(ii) Quality of services provided to enrollees;

(iii) Accessibility, including appropriate utilization, of services offered to enrollees;

(iv) Demonstrated capability to perform contracted services, including ability to supply an adequate provider network;

(v) Payment rates; and

(vi) The ability to meet other specifically defined contract requirements established by the authority, including consideration of past and current performance and participation in other state or federal health programs as a contractor.

(c) Consideration should be given to using multiple year contracting periods.

(d) Quality, accessibility, and demonstrated commitment to serving low-income populations shall be given significant weight in the contracting, evaluation, and assignment process.

(e) All contractors that are regulated health carriers must meet state minimum net worth requirements as defined in applicable state laws. The authority shall adopt rules establishing the minimum net worth requirements for contractors that are not regulated health carriers. This subsection does not limit the authority of the Washington state health care authority to take action under a contract upon finding that a contractor's financial status seriously jeopardizes the contractor's ability to meet its contract obligations.

(f) Procedures for resolution of disputes between the authority and contract bidders or the authority and contracting carriers related to the award of, or failure to award, a managed care contract must be clearly set out in the procurement document.

(6) The authority may apply the principles set forth in subsection (5) of this section to its managed health care purchasing efforts on behalf of clients receiving supplemental security income benefits to the extent appropriate.

(7) ~~((By April 1, 2016,))~~ Any contract with a managed health care system to provide services to medical assistance enrollees shall require that managed health care systems offer contracts to ~~((behavioral health organizations,))~~ mental health providers ~~((or chemical dependency))~~ and substance use disorder treatment providers to provide access to primary care services integrated into behavioral health clinical settings, for individuals with behavioral health and medical comorbidities.

(8) Managed health care system contracts effective on or after April 1, 2016, shall serve geographic areas that correspond to the regional service areas established in RCW 74.09.870.

(9) A managed health care system shall pay a nonparticipating provider that provides a service covered under this chapter or other applicable law to the system's enrollee no more than the lowest amount paid for that service under the managed health care system's contracts with

similar providers in the state if the managed health care system has made good faith efforts to contract with the nonparticipating provider.

(10) For services covered under this chapter or other applicable law to medical assistance or medical care services enrollees (~~(and provided on or after August 24, 2014)~~), nonparticipating providers must accept as payment in full the amount paid by the managed health care system under subsection (9) of this section in addition to any deductible, coinsurance, or copayment that is due from the enrollee for the service provided. An enrollee is not liable to any nonparticipating provider for covered services, except for amounts due for any deductible, coinsurance, or copayment under the terms and conditions set forth in the managed health care system contract to provide services under this section.

(11) Pursuant to federal managed care access standards, 42 C.F.R. Sec. 438, managed health care systems must maintain a network of appropriate providers that is supported by written agreements sufficient to provide adequate access to all services covered under the contract with the authority, including hospital-based physician services. The authority will monitor and periodically report on the proportion of services provided by contracted providers and nonparticipating providers, by county, for each managed health care system to ensure that managed health care systems are meeting network adequacy requirements. No later than January 1st of each year, the authority will review and report its findings to the appropriate policy and fiscal committees of the legislature for the preceding state fiscal year.

(12) Payments under RCW 74.60.130 are exempt from this section.

(13) Subsections (9) through (11) of this section expire July 1, 2021.

Sec. 4005. RCW 74.09.555 and 2014 c 225 s 102 are each amended to read as follows:

(1) The authority shall adopt rules and policies providing that when persons with a mental disorder, who were enrolled in medical assistance immediately prior to confinement, are released from confinement, their medical assistance coverage will be fully reinstated on the day of their release, subject to any expedited review of their continued eligibility for medical assistance coverage that is required under federal or state law.

(2) The authority, in collaboration with the Washington association of sheriffs and police chiefs, the department of corrections, managed care organizations, and ~~(the)~~ behavioral health administrative services organizations, shall establish procedures for coordination between the authority and department field offices, institutions for mental disease, and correctional institutions, as defined in RCW 9.94.049, that result in prompt reinstatement of eligibility and speedy eligibility determinations for persons who are likely to be eligible for medical assistance services upon release from confinement. Procedures developed under this subsection must address:

(a) Mechanisms for receiving medical assistance services applications on behalf of confined persons in anticipation of their release from confinement;

(b) Expedient review of applications filed by or on behalf of confined persons and, to the extent practicable, completion of the review before the person is released;

(c) Mechanisms for providing medical assistance services identity cards to persons eligible for medical assistance services immediately upon their release from confinement; and

(d) Coordination with the federal social security administration, through interagency agreements or otherwise, to expedite processing of applications for federal supplemental security income or social security disability benefits, including federal acceptance of applications on behalf of confined persons.

(3) Where medical or psychiatric examinations during a person's confinement indicate that the person is disabled, the correctional institution or institution for mental diseases shall provide the authority with that information for purposes of making medical assistance eligibility and enrollment determinations prior to the person's release from confinement. The authority shall, to the maximum extent permitted by federal law, use the examination in making its determination whether the person is disabled and eligible for medical assistance.

(4) For purposes of this section, "confined" or "confinement" means incarcerated in a correctional institution, as defined in RCW 9.94.049, or admitted to an institute for mental disease, as defined in 42 C.F.R. part 435, Sec. 1009 on July 24, 2005.

(5) For purposes of this section, "likely to be eligible" means that a person:

(a) Was enrolled in medicaid or supplemental security income or the medical care services program immediately before he or she was confined and his or her enrollment was terminated during his or her confinement; or

(b) Was enrolled in medicaid or supplemental security income or the medical care services program at any time during the five years before his or her confinement, and medical or psychiatric examinations during the person's confinement indicate that the person continues to be disabled and the disability is likely to last at least twelve months following release.

(6) The economic services administration within the department shall adopt standardized statewide screening and application practices and forms designed to facilitate the application of a confined person who is likely to be eligible for medicaid.

Sec. 4006. RCW 74.09.871 and 2018 c 201 s 2007 are each amended to read as follows:

(1) Any agreement or contract by the authority to provide behavioral health services as defined under RCW 71.24.025 to persons eligible for benefits under medicaid,

Title XIX of the social security act, and to persons not eligible for medicaid must include the following:

(a) Contractual provisions consistent with the intent expressed in RCW 71.24.015~~((~~7~~))~~ and 71.36.005~~((~~7~~ and 70.96A.011))~~);

(b) Standards regarding the quality of services to be provided, including increased use of evidence-based, research-based, and promising practices, as defined in RCW 71.24.025;

(c) Accountability for the client outcomes established in RCW 43.20A.895 (as recodified by this act), 70.320.020, and 71.36.025 and performance measures linked to those outcomes;

(d) Standards requiring behavioral health administrative services organizations and managed care organizations to maintain a network of appropriate providers that is supported by written agreements sufficient to provide adequate access to all services covered under the contract with the authority and to protect essential ~~((existing))~~ behavioral health system infrastructure and capacity, including a continuum of ~~((chemical dependency))~~ substance use disorder services;

(e) Provisions to require that medically necessary ~~((chemical dependency))~~ substance use disorder and mental health treatment services be available to clients;

(f) Standards requiring the use of behavioral health service provider reimbursement methods that incentivize improved performance with respect to the client outcomes established in RCW 43.20A.895 (as recodified by this act) and 71.36.025, integration of behavioral health and primary care services at the clinical level, and improved care coordination for individuals with complex care needs;

(g) Standards related to the financial integrity of the ~~((responding organization. The authority shall adopt rules establishing the solvency requirements and other financial integrity standards for behavioral health organizations))~~ contracting entity. This subsection does not limit the authority of the authority to take action under a contract upon finding that a ~~((behavioral health organization's))~~ contracting entity's financial status jeopardizes the ~~((organization's))~~ contracting entity's ability to meet its contractual obligations;

(h) Mechanisms for monitoring performance under the contract and remedies for failure to substantially comply with the requirements of the contract including, but not limited to, financial deductions, termination of the contract, receivership, reprocurement of the contract, and injunctive remedies;

(i) Provisions to maintain the decision-making independence of designated ~~((mental health professionals or designated chemical dependency specialists))~~ crisis responders; and

(j) Provisions stating that public funds appropriated by the legislature may not be used to promote or deter, encourage, or discourage employees from exercising their

rights under Title 29, chapter 7, subchapter II, United States Code or chapter 41.56 RCW.

(2) The following factors must be given significant weight in any ~~((purchasing))~~ procurement process under this section:

(a) Demonstrated commitment and experience in serving low-income populations;

(b) Demonstrated commitment and experience serving persons who have mental illness, ~~((chemical dependency))~~ substance use disorders, or co-occurring disorders;

(c) Demonstrated commitment to and experience with partnerships with county and municipal criminal justice systems, housing services, and other critical support services necessary to achieve the outcomes established in RCW 43.20A.895 (as recodified by this act), 70.320.020, and 71.36.025;

(d) Recognition that meeting enrollees' physical and behavioral health care needs is a shared responsibility of contracted behavioral health administrative services organizations, managed ~~((health))~~ care ~~((systems))~~ organizations, service providers, the state, and communities;

(e) Consideration of past and current performance and participation in other state or federal behavioral health programs as a contractor; and

(f) The ability to meet requirements established by the authority.

(3) For purposes of purchasing behavioral health services and medical care services for persons eligible for benefits under medicaid, Title XIX of the social security act and for persons not eligible for medicaid, the authority must use regional service areas. The regional service areas must be established by the authority as provided in RCW 74.09.870.

(4) Consideration must be given to using multiple-biennia contracting periods.

(5) Each behavioral health administrative services organization operating pursuant to a contract issued under this section shall ~~((enroll))~~ serve clients within its regional service area who meet the authority's eligibility criteria for mental health and ~~((chemical dependency))~~ substance use disorder services within available resources.

PART 5

Sec. 5001. RCW 9.41.280 and 2016 sp.s. c 29 s 403 are each amended to read as follows:

(1) It is unlawful for a person to carry onto, or to possess on, public or private elementary or secondary school premises, school-provided transportation, or areas of facilities while being used exclusively by public or private schools:

(a) Any firearm;

(b) Any other dangerous weapon as defined in RCW 9.41.250;

(c) Any device commonly known as "nun-chu-ka sticks," consisting of two or more lengths of wood, metal, plastic, or similar substance connected with wire, rope, or other means;

(d) Any device, commonly known as "throwing stars," which are multipointed, metal objects designed to embed upon impact from any aspect;

(e) Any air gun, including any air pistol or air rifle, designed to propel a BB, pellet, or other projectile by the discharge of compressed air, carbon dioxide, or other gas; or

(f)(i) Any portable device manufactured to function as a weapon and which is commonly known as a stun gun, including a projectile stun gun which projects wired probes that are attached to the device that emit an electrical charge designed to administer to a person or an animal an electric shock, charge, or impulse; or

(ii) Any device, object, or instrument which is used or intended to be used as a weapon with the intent to injure a person by an electric shock, charge, or impulse.

(2) Any such person violating subsection (1) of this section is guilty of a gross misdemeanor. If any person is convicted of a violation of subsection (1)(a) of this section, the person shall have his or her concealed pistol license, if any revoked for a period of three years. Anyone convicted under this subsection is prohibited from applying for a concealed pistol license for a period of three years. The court shall send notice of the revocation to the department of licensing, and the city, town, or county which issued the license.

Any violation of subsection (1) of this section by elementary or secondary school students constitutes grounds for expulsion from the state's public schools in accordance with RCW 28A.600.010. An appropriate school authority shall promptly notify law enforcement and the student's parent or guardian regarding any allegation or indication of such violation.

Upon the arrest of a person at least twelve years of age and not more than twenty-one years of age for violating subsection (1)(a) of this section, the person shall be detained or confined in a juvenile or adult facility for up to seventy-two hours. The person shall not be released within the seventy-two hours until after the person has been examined and evaluated by the designated crisis responder unless the court in its discretion releases the person sooner after a determination regarding probable cause or on probation bond or bail.

Within twenty-four hours of the arrest, the arresting law enforcement agency shall refer the person to the designated crisis responder for examination and evaluation under chapter 71.05 or 71.34 RCW and inform a parent or guardian of the person of the arrest, detention, and examination. The designated crisis responder shall examine and evaluate the person subject to the provisions of chapter 71.05 or 71.34 RCW. The examination shall occur at the facility in which the person is detained or confined. If the

person has been released on probation, bond, or bail, the examination shall occur wherever is appropriate.

Upon completion of any examination by the designated crisis responder, the results of the examination shall be sent to the court, and the court shall consider those results in making any determination about the person.

The designated crisis responder shall, to the extent permitted by law, notify a parent or guardian of the person that an examination and evaluation has taken place and the results of the examination. Nothing in this subsection prohibits the delivery of additional, appropriate mental health examinations to the person while the person is detained or confined.

If the designated crisis responder determines it is appropriate, the designated crisis responder may refer the person to the local behavioral health administrative services organization for follow-up services (~~or the department of social and health services~~) or other community providers for other services to the family and individual.

(3) Subsection (1) of this section does not apply to:

(a) Any student or employee of a private military academy when on the property of the academy;

(b) Any person engaged in military, law enforcement, or school district security activities. However, a person who is not a commissioned law enforcement officer and who provides school security services under the direction of a school administrator may not possess a device listed in subsection (1)(f) of this section unless he or she has successfully completed training in the use of such devices that is equivalent to the training received by commissioned law enforcement officers;

(c) Any person who is involved in a convention, showing, demonstration, lecture, or firearms safety course authorized by school authorities in which the firearms of collectors or instructors are handled or displayed;

(d) Any person while the person is participating in a firearms or air gun competition approved by the school or school district;

(e) Any person in possession of a pistol who has been issued a license under RCW 9.41.070, or is exempt from the licensing requirement by RCW 9.41.060, while picking up or dropping off a student;

(f) Any nonstudent at least eighteen years of age legally in possession of a firearm or dangerous weapon that is secured within an attended vehicle or concealed from view within a locked unattended vehicle while conducting legitimate business at the school;

(g) Any nonstudent at least eighteen years of age who is in lawful possession of an unloaded firearm, secured in a vehicle while conducting legitimate business at the school; or

(h) Any law enforcement officer of the federal, state, or local government agency.

(4) Subsections (1)(c) and (d) of this section do not apply to any person who possesses nun-chu-ka sticks,

throwing stars, or other dangerous weapons to be used in martial arts classes authorized to be conducted on the school premises.

(5) Subsection (1)(f)(i) of this section does not apply to any person who possesses a device listed in subsection (1)(f)(i) of this section, if the device is possessed and used solely for the purpose approved by a school for use in a school authorized event, lecture, or activity conducted on the school premises.

(6) Except as provided in subsection (3)(b), (c), (f), and (h) of this section, firearms are not permitted in a public or private school building.

(7) "GUN-FREE ZONE" signs shall be posted around school facilities giving warning of the prohibition of the possession of firearms on school grounds.

Sec. 5002. RCW 9.94A.660 and 2016 sp.s. c 29 s 524 are each amended to read as follows:

(1) An offender is eligible for the special drug offender sentencing alternative if:

(a) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.533 (3) or (4);

(b) The offender is convicted of a felony that is not a felony driving while under the influence of intoxicating liquor or any drug under RCW 46.61.502(6) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug under RCW 46.61.504(6);

(c) The offender has no current or prior convictions for a sex offense at any time or violent offense within ten years before conviction of the current offense, in this state, another state, or the United States;

(d) For a violation of the Uniform Controlled Substances Act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance;

(e) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence;

(f) The end of the standard sentence range for the current offense is greater than one year; and

(g) The offender has not received a drug offender sentencing alternative more than once in the prior ten years before the current offense.

(2) A motion for a special drug offender sentencing alternative may be made by the court, the offender, or the state.

(3) If the sentencing court determines that the offender is eligible for an alternative sentence under this section and that the alternative sentence is appropriate, the court shall waive imposition of a sentence within the standard sentence range and impose a sentence consisting of either a prison-based alternative under RCW 9.94A.662 or a residential (~~chemical dependency~~) substance use disorder treatment-based alternative under RCW 9.94A.664. The residential (~~chemical dependency~~) substance use disorder treatment-based alternative is only available if the midpoint of the standard range is twenty-four months or less.

(4) To assist the court in making its determination, the court may order the department to complete either or both a risk assessment report and a (~~chemical dependency~~) substance use disorder screening report as provided in RCW 9.94A.500.

(5)(a) If the court is considering imposing a sentence under the residential (~~chemical dependency~~) substance use disorder treatment-based alternative, the court may order an examination of the offender by the department. The examination shall, at a minimum, address the following issues:

(i) Whether the offender suffers from drug addiction;

(ii) Whether the addiction is such that there is a probability that criminal behavior will occur in the future;

(iii) Whether effective treatment for the offender's addiction is available from a provider that has been licensed or certified by the department of (~~social and~~) health (~~services~~); and

(iv) Whether the offender and the community will benefit from the use of the alternative.

(b) The examination report must contain:

(i) A proposed monitoring plan, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others; and

(ii) Recommended crime-related prohibitions and affirmative conditions.

(6) When a court imposes a sentence of community custody under this section:

(a) The court may impose conditions as provided in RCW 9.94A.703 and may impose other affirmative conditions as the court considers appropriate. In addition, an offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring for alcohol or controlled substances.

(b) The department may impose conditions and sanctions as authorized in RCW 9.94A.704 and 9.94A.737.

(7)(a) The court may bring any offender sentenced under this section back into court at any time on its own initiative to evaluate the offender's progress in treatment or to determine if any violations of the conditions of the sentence have occurred.

(b) If the offender is brought back to court, the court may modify the conditions of the community custody or impose sanctions under (c) of this subsection.

(c) The court may order the offender to serve a term of total confinement within the standard range of the offender's current offense at any time during the period of community custody if the offender violates the conditions or requirements of the sentence or if the offender is failing to make satisfactory progress in treatment.

(d) An offender ordered to serve a term of total confinement under (c) of this subsection shall receive credit for any time previously served under this section.

(8) In serving a term of community custody imposed upon failure to complete, or administrative termination from, the special drug offender sentencing alternative program, the offender shall receive no credit for time served in community custody prior to termination of the offender's participation in the program.

(9) An offender sentenced under this section shall be subject to all rules relating to earned release time with respect to any period served in total confinement.

(10) Costs of examinations and preparing treatment plans under a special drug offender sentencing alternative may be paid, at the option of the county, from funds provided to the county from the criminal justice treatment account under RCW 71.24.580.

Sec. 5003. RCW 9.94A.664 and 2009 c 389 s 5 are each amended to read as follows:

(1) A sentence for a residential (~~chemical dependency~~) substance use disorder treatment-based alternative shall include a term of community custody equal to one-half the midpoint of the standard sentence range or two years, whichever is greater, conditioned on the offender entering and remaining in residential (~~chemical dependency~~) substance use disorder treatment certified (~~under chapter 70.96A RCW~~) by the department of health for a period set by the court between three and six months.

(2)(a) The court shall impose, as conditions of community custody, treatment and other conditions as proposed in the examination report completed pursuant to RCW 9.94A.660.

(b) If the court imposes a term of community custody, the department shall, within available resources, make (~~chemical dependency~~) substance use disorder assessment and treatment services available to the offender during the term of community custody.

(3)(a) If the court imposes a sentence under this section, the treatment provider must send the treatment plan to the court within thirty days of the offender's arrival to the residential (~~chemical dependency~~) substance use disorder treatment program.

(b) Upon receipt of the plan, the court shall schedule a progress hearing during the period of residential (~~chemical dependency~~) substance use disorder treatment, and

schedule a treatment termination hearing for three months before the expiration of the term of community custody.

(c) Before the progress hearing and treatment termination hearing, the treatment provider and the department shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment.

(4) At a progress hearing or treatment termination hearing, the court may:

(a) Authorize the department to terminate the offender's community custody status on the expiration date determined under subsection (1) of this section;

(b) Continue the hearing to a date before the expiration date of community custody, with or without modifying the conditions of community custody; or

(c) Impose a term of total confinement equal to one-half the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.701.

(5) If the court imposes a term of total confinement, the department shall, within available resources, make (~~chemical dependency~~) substance use disorder assessment and treatment services available to the offender during the term of total confinement and subsequent term of community custody.

Sec. 5004. RCW 10.31.110 and 2014 c 225 s 57 are each amended to read as follows:

(1) When a police officer has reasonable cause to believe that the individual has committed acts constituting a nonfelony crime that is not a serious offense as identified in RCW 10.77.092 and the individual is known by history or consultation with the behavioral health administrative services organization to suffer from a mental disorder, the arresting officer may:

(a) Take the individual to a crisis stabilization unit as defined in RCW 71.05.020(~~(6)~~). Individuals delivered to a crisis stabilization unit pursuant to this section may be held by the facility for a period of up to twelve hours. The individual must be examined by a mental health professional within three hours of arrival;

(b) Take the individual to a triage facility as defined in RCW 71.05.020. An individual delivered to a triage facility which has elected to operate as an involuntary facility may be held up to a period of twelve hours. The individual must be examined by a mental health professional within three hours of arrival;

(c) Refer the individual to a mental health professional for evaluation for initial detention and proceeding under chapter 71.05 RCW; or

(d) Release the individual upon agreement to voluntary participation in outpatient treatment.

(2) If the individual is released to the community, the mental health provider shall inform the arresting officer of

the release within a reasonable period of time after the release if the arresting officer has specifically requested notification and provided contact information to the provider.

(3) In deciding whether to refer the individual to treatment under this section, the police officer shall be guided by standards mutually agreed upon with the prosecuting authority, which address, at a minimum, the length, seriousness, and recency of the known criminal history of the individual, the mental health history of the individual, where available, and the circumstances surrounding the commission of the alleged offense.

(4) Any agreement to participate in treatment shall not require individuals to stipulate to any of the alleged facts regarding the criminal activity as a prerequisite to participation in a mental health treatment alternative. The agreement is inadmissible in any criminal or civil proceeding. The agreement does not create immunity from prosecution for the alleged criminal activity.

(5) If an individual violates such agreement and the mental health treatment alternative is no longer appropriate:

(a) The mental health provider shall inform the referring law enforcement agency of the violation; and

(b) The original charges may be filed or referred to the prosecutor, as appropriate, and the matter may proceed accordingly.

(6) The police officer is immune from liability for any good faith conduct under this section.

Sec. 5005. RCW 10.77.010 and 2016 sp.s. c 29 s 405 are each amended to read as follows:

As used in this chapter:

(1) "Admission" means acceptance based on medical necessity, of a person as a patient.

(2) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less-restrictive setting.

(3) "Conditional release" means modification of a court-ordered commitment, which may be revoked upon violation of any of its terms.

(4) A "criminally insane" person means any person who has been acquitted of a crime charged by reason of insanity, and thereupon found to be a substantial danger to other persons or to present a substantial likelihood of committing criminal acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions.

(5) "Department" means the state department of social and health services.

(6) "Designated crisis responder" has the same meaning as provided in RCW 71.05.020.

(7) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter, pending evaluation.

(8) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist or psychologist, or a social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary.

(9) "Developmental disability" means the condition as defined in RCW 71A.10.020(5).

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

(11) "Furlough" means an authorized leave of absence for a resident of a state institution operated by the department designated for the custody, care, and treatment of the criminally insane, consistent with an order of conditional release from the court under this chapter, without any requirement that the resident be accompanied by, or be in the custody of, any law enforcement or institutional staff, while on such unescorted leave.

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

(13) "History of one or more violent acts" means violent acts committed during: (a) The ten-year period of time prior to the filing of criminal charges; plus (b) the amount of time equal to time spent during the ten-year period in a mental health facility or in confinement as a result of a criminal conviction.

(14) "Immediate family member" means a spouse, child, stepchild, parent, stepparent, grandparent, sibling, or domestic partner.

(15) "Incompetency" means a person lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect.

(16) "Indigent" means any person who is financially unable to obtain counsel or other necessary expert or professional services without causing substantial hardship to the person or his or her family.

(17) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for an individual with developmental disabilities, which shall state:

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

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

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

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

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

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

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

(18) "Professional person" means:

(a) A psychiatrist licensed as a physician and surgeon in this state who has, in addition, completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology or the American osteopathic board of neurology and psychiatry;

(b) A psychologist licensed as a psychologist pursuant to chapter 18.83 RCW; or

(c) A social worker with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010.

(19) (~~"Registration records" include all the records of the department, behavioral health organizations, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness.~~

~~((20))~~ "Release" means legal termination of the court-ordered commitment under the provisions of this chapter.

~~((21))~~ (20) "Secretary" means the secretary of the department of social and health services or his or her designee.

~~((22))~~ (21) "Treatment" means any currently standardized medical or mental health procedure including medication.

~~((23))~~ (22) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by behavioral health administrative services organizations and their staffs, by managed care organizations and their staffs, and by treatment facilities. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, behavioral health administrative services organizations, managed care

organizations, or a treatment facility if the notes or records are not available to others.

~~((24))~~ (23) "Violent act" means behavior that: (a)(i) Resulted in; (ii) if completed as intended would have resulted in; or (iii) was threatened to be carried out by a person who had the intent and opportunity to carry out the threat and would have resulted in, homicide, nonfatal injuries, or substantial damage to property; or (b) recklessly creates an immediate risk of serious physical injury to another person. As used in this subsection, "nonfatal injuries" means physical pain or injury, illness, or an impairment of physical condition. "Nonfatal injuries" shall be construed to be consistent with the definition of "bodily injury," as defined in RCW 9A.04.110.

Sec. 5006. RCW 10.77.065 and 2016 sp.s. c 29 s 409 are each amended to read as follows:

(1)(a)(i) The expert conducting the evaluation shall provide his or her report and recommendation to the court in which the criminal proceeding is pending. For a competency evaluation of a defendant who is released from custody, if the evaluation cannot be completed within twenty-one days due to a lack of cooperation by the defendant, the evaluator shall notify the court that he or she is unable to complete the evaluation because of such lack of cooperation.

(ii) A copy of the report and recommendation shall be provided to the designated crisis responder, the prosecuting attorney, the defense attorney, and the professional person at the local correctional facility where the defendant is being held, or if there is no professional person, to the person designated under (a)(iv) of this subsection. Upon request, the evaluator shall also provide copies of any source documents relevant to the evaluation to the designated crisis responder.

(iii) Any facility providing inpatient services related to competency shall discharge the defendant as soon as the facility determines that the defendant is competent to stand trial. Discharge shall not be postponed during the writing and distribution of the evaluation report. Distribution of an evaluation report by a facility providing inpatient services shall ordinarily be accomplished within two working days or less following the final evaluation of the defendant. If the defendant is discharged to the custody of a local correctional facility, the local correctional facility must continue the medication regimen prescribed by the facility, when clinically appropriate, unless the defendant refuses to cooperate with medication and an involuntary medication order by the court has not been entered.

(iv) If there is no professional person at the local correctional facility, the local correctional facility shall designate a professional person as defined in RCW 71.05.020 or, in cooperation with the behavioral health administrative services organization, a professional person at the behavioral health administrative services organization to receive the report and recommendation.

(v) Upon commencement of a defendant's evaluation in the local correctional facility, the local correctional facility must notify the evaluator of the name of the

professional person, or person designated under (a)(iv) of this subsection, to receive the report and recommendation.

(b) If the evaluator concludes, under RCW 10.77.060(3)(f), the person should be evaluated by a designated crisis responder under chapter 71.05 RCW, the court shall order such evaluation be conducted prior to release from confinement when the person is acquitted or convicted and sentenced to confinement for twenty-four months or less, or when charges are dismissed pursuant to a finding of incompetent to stand trial.

(2) The designated crisis responder shall provide written notification within twenty-four hours of the results of the determination whether to commence proceedings under chapter 71.05 RCW. The notification shall be provided to the persons identified in subsection (1)(a) of this section.

(3) The prosecuting attorney shall provide a copy of the results of any proceedings commenced by the designated crisis responder under subsection (2) of this section to the secretary.

(4) A facility conducting a civil commitment evaluation under RCW 10.77.086(4) or 10.77.088(1)(c)(ii) that makes a determination to release the person instead of filing a civil commitment petition must provide written notice to the prosecutor and defense attorney at least twenty-four hours prior to release. The notice may be given by email, facsimile, or other means reasonably likely to communicate the information immediately.

(5) The fact of admission and all information and records compiled, obtained, or maintained in the course of providing services under this chapter may also be disclosed to the courts solely to prevent the entry of any evaluation or treatment order that is inconsistent with any order entered under chapter 71.05 RCW.

Sec. 5007. RCW 13.40.165 and 2016 c 106 s 3 are each amended to read as follows:

(1) The purpose of this disposition alternative is to ensure that successful treatment options to reduce recidivism are available to eligible youth, pursuant to RCW ~~((70.96A.520))~~ 71.24.615. It is also the purpose of the disposition alternative to assure that minors in need of ~~((chemical dependency))~~ substance use disorder, mental health, and/or co-occurring disorder treatment receive an appropriate continuum of culturally relevant care and treatment, including prevention and early intervention, self-directed care, parent-directed care, and residential treatment. To facilitate the continuum of care and treatment to minors in out-of-home placements, all divisions of the department that provide these services to minors shall jointly plan and deliver these services. It is also the purpose of the disposition alternative to protect the rights of minors against needless hospitalization and deprivations of liberty and to enable treatment decisions to be made in response to clinical needs and in accordance with sound professional judgment. The mental health, substance abuse, and co-occurring disorder treatment providers shall, to the extent possible, offer services that involve minors' parents, guardians, and family.

(2) The court must consider eligibility for the ~~((chemical dependency))~~ substance use disorder or mental health disposition alternative when a juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed an A- or B+ offense, other than a first time B+ offense under chapter 69.50 RCW. The court, on its own motion or the motion of the state or the respondent if the evidence shows that the offender may be chemically dependent, substance abusing, or has significant mental health or co-occurring disorders may order an examination by a ~~((chemical dependency))~~ substance use disorder counselor from a ~~((chemical dependency))~~ substance use disorder treatment facility approved under chapter 70.96A RCW or a mental health professional as defined in chapter 71.34 RCW to determine if the youth is chemically dependent, substance abusing, or suffers from significant mental health or co-occurring disorders. The offender shall pay the cost of any examination ordered under this subsection unless the court finds that the offender is indigent and no third party insurance coverage is available, in which case the state shall pay the cost.

(3) The report of the examination shall include at a minimum the following: The respondent's version of the facts and the official version of the facts, the respondent's offense history, an assessment of drug-alcohol problems, mental health diagnoses, previous treatment attempts, the respondent's social, educational, and employment situation, and other evaluation measures used. The report shall set forth the sources of the examiner's information.

(4) The examiner shall assess and report regarding the respondent's relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

- (a) Whether inpatient and/or outpatient treatment is recommended;
- (b) Availability of appropriate treatment;
- (c) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members, legal guardians, or others;
- (d) Anticipated length of treatment; and
- (e) Recommended crime-related prohibitions.

(5) The court on its own motion may order, or on a motion by the state or the respondent shall order, a second examination. The evaluator shall be selected by the party making the motion. The requesting party shall pay the cost of any examination ordered under this subsection unless the requesting party is the offender and the court finds that the offender is indigent and no third party insurance coverage is available, in which case the state shall pay the cost.

(6)(a) After receipt of reports of the examination, the court shall then consider whether the offender and the community will benefit from use of this disposition alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this section.

(b) If the court determines that this disposition alternative is appropriate, then the court shall impose the standard range for the offense, or if the court concludes, and enters reasons for its conclusion, that such disposition would effectuate a manifest injustice, the court shall impose a disposition above the standard range as indicated in option D of RCW 13.40.0357 if the disposition is an increase from the standard range and the confinement of the offender does not exceed a maximum of fifty-two weeks, suspend execution of the disposition, and place the offender on community supervision for up to one year. As a condition of the suspended disposition, the court shall require the offender to undergo available outpatient drug/alcohol, mental health, or co-occurring disorder treatment and/or inpatient mental health or drug/alcohol treatment. The court shall only order inpatient treatment under this section if a funded bed is available. If the inpatient treatment is longer than ninety days, the court shall hold a review hearing every thirty days beyond the initial ninety days. The respondent may appear telephonically at these review hearings if in compliance with treatment. As a condition of the suspended disposition, the court may impose conditions of community supervision and other sanctions, including up to thirty days of confinement, one hundred fifty hours of community restitution, and payment of legal financial obligations and restitution.

(7) The mental health/co-occurring disorder/drug/alcohol treatment provider shall submit monthly reports on the respondent's progress in treatment to the court and the parties. The reports shall reference the treatment plan and include at a minimum the following: Dates of attendance, respondent's compliance with requirements, treatment activities, the respondent's relative progress in treatment, and any other material specified by the court at the time of the disposition.

At the time of the disposition, the court may set treatment review hearings as the court considers appropriate.

If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may impose sanctions pursuant to RCW 13.40.200 or revoke the suspension and order execution of the disposition. The court shall give credit for any confinement time previously served if that confinement was for the offense for which the suspension is being revoked.

(8) For purposes of this section, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the offense charged. "Victim" may also include a known parent or guardian of a victim who is a minor child or is not a minor child but is incapacitated, incompetent, disabled, or deceased.

(9) Whenever a juvenile offender is entitled to credit for time spent in detention prior to a dispositional order, the dispositional order shall specifically state the number of days of credit for time served.

(10) In no case shall the term of confinement imposed by the court at disposition exceed that to which an adult could be subjected for the same offense.

(11) A disposition under this section is not appealable under RCW 13.40.230.

(12) Subject to funds appropriated for this specific purpose, the costs incurred by the juvenile courts for the mental health, ~~((chemical dependency))~~ substance use disorder, and/or co-occurring disorder evaluations, treatment, and costs of supervision required under this section shall be paid by the ~~((department))~~ health care authority.

Sec. 5008. RCW 36.28A.440 and 2018 c 142 s 1 are each amended to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the Washington association of sheriffs and police chiefs shall develop and implement a mental health field response grant program. The purpose of the program is to assist local law enforcement agencies to establish and expand mental health field response capabilities, utilizing mental health professionals to professionally, humanely, and safely respond to crises involving persons with behavioral health issues with treatment, diversion, and reduced incarceration time as primary goals. A portion of the grant funds may also be used to develop data management capability to support the program.

(2) Grants must be awarded to local law enforcement agencies based on locally developed proposals to incorporate mental health professionals into the agencies' mental health field response planning and response. Two or more agencies may submit a joint grant proposal to develop their mental health field response proposals. Proposals must provide a plan for improving mental health field response and diversion from incarceration through modifying or expanding law enforcement practices in partnership with mental health professionals. A peer review panel appointed by the Washington association of sheriffs and police chiefs in consultation with ~~((integrated))~~ managed care organizations and behavioral health administrative services organizations must review the grant applications. Once the Washington association of sheriffs and police chiefs certifies that the application satisfies the proposal criteria, the grant funds will be distributed. To the extent possible, at least one grant recipient agency should be from the east side of the state and one from the west side of the state with the crest of the Cascades being the dividing line. The Washington association of sheriffs and police chiefs shall make every effort to fund at least eight grants per fiscal year with funding provided for this purpose from all allowable sources under this section. The Washington association of sheriffs and police chiefs may prioritize grant applications that include local matching funds. Grant recipients must be selected and receiving funds no later than October 1, 2018.

(3) Grant recipients must include at least one mental health professional who will perform professional services under the plan. A mental health professional may assist patrolling officers in the field or in an on-call capacity, provide preventive, follow-up, training on mental health field response best practices, or other services at the direction of the local law enforcement agency. Nothing in

this subsection (3) limits the mental health professional's participation to field patrol. Grant recipients are encouraged to coordinate with local public safety answering points to maximize the goals of the program.

(4) Within existing resources, the Washington association of sheriffs and police chiefs shall:

(a) Consult with the department of social and health services research and data analysis unit to establish data collection and reporting guidelines for grant recipients. The data will be used to study and evaluate whether the use of mental health field response programs improves outcomes of interactions with persons experiencing behavioral health crises, including reducing rates of violence and harm, reduced arrests, and jail or emergency room usage;

(b) Consult with the ~~((department of social and health services behavioral health administration))~~ health care authority, the department of health, and the managed care system to develop requirements for participating mental health professionals; and

(c) Coordinate with public safety answering points, behavioral health, and the department of social and health services to develop and incorporate telephone triage criteria or dispatch protocols to assist with mental health, law enforcement, and emergency medical responses involving mental health situations.

(5) The Washington association of sheriffs and police chiefs shall submit an annual report to the governor and appropriate committees of the legislature on the program. The report must include information on grant recipients, use of funds, participation of mental health professionals, and feedback from the grant recipients by December 1st of each year the program is funded.

(6) Grant recipients shall develop and provide or arrange for training necessary for mental health professionals to operate successfully and competently in partnership with law enforcement agencies. The training must provide the professionals with a working knowledge of law enforcement procedures and tools sufficient to provide for the safety of the professionals, partnered law enforcement officers, and members of the public.

(7) Nothing in this section prohibits the Washington association of sheriffs and police chiefs from soliciting or accepting private funds to support the program created in this section.

Sec. 5009. RCW 41.05.690 and 2014 c 223 s 6 are each amended to read as follows:

(1) There is created a performance measures committee, the purpose of which is to identify and recommend standard statewide measures of health performance to inform public and private health care purchasers and to propose benchmarks to track costs and improvements in health outcomes.

(2) Members of the committee must include representation from state agencies, small and large employers, health plans, patient groups, federally recognized

tribes, consumers, academic experts on health care measurement, hospitals, physicians, and other providers. The governor shall appoint the members of the committee, except that a statewide association representing hospitals may appoint a member representing hospitals, and a statewide association representing physicians may appoint a member representing physicians. The governor shall ensure that members represent diverse geographic locations and both rural and urban communities. The chief executive officer of the lead organization must also serve on the committee. The committee must be chaired by the director of the authority.

(3) The committee shall develop a transparent process for selecting performance measures, and the process must include opportunities for public comment.

(4) By January 1, 2015, the committee shall submit the performance measures to the authority. The measures must include dimensions of:

(a) Prevention and screening;

(b) Effective management of chronic conditions;

(c) Key health outcomes;

(d) Care coordination and patient safety; and

(e) Use of the lowest cost, highest quality care for preventive care and acute and chronic conditions.

(5) The committee shall develop a measure set that:

(a) Is of manageable size;

(b) Is based on readily available claims and clinical data;

(c) Gives preference to nationally reported measures and, where nationally reported measures may not be appropriate, measures used by state agencies that purchase health care or commercial health plans;

(d) Focuses on the overall performance of the system, including outcomes and total cost;

(e) Is aligned with the governor's performance management system measures and common measure requirements specific to medicaid delivery systems under RCW 70.320.020 and 43.20A.895 (as recodified by this act);

(f) Considers the needs of different stakeholders and the populations served; and

(g) Is usable by multiple payers, providers, hospitals, purchasers, public health, and communities as part of health improvement, care improvement, provider payment systems, benefit design, and administrative simplification for providers and hospitals.

(6) State agencies shall use the measure set developed under this section to inform and set benchmarks for purchasing decisions.

(7) The committee shall establish a public process to periodically evaluate the measure set and make additions or changes to the measure set as needed.

Sec. 5010. RCW 43.20A.895 and 2014 c 225 s 64 are each amended to read as follows:

(1) The systems responsible for financing, administration, and delivery of publicly funded mental health and ~~((chemical dependency))~~ substance use disorder services to adults must be designed and administered to achieve improved outcomes for adult clients served by those systems through increased use and development of evidence-based, research-based, and promising practices, as defined in RCW 71.24.025. For purposes of this section, client outcomes include: Improved health status; increased participation in employment and education; reduced involvement with the criminal justice system; enhanced safety and access to treatment for forensic patients; reduction in avoidable utilization of and costs associated with hospital, emergency room, and crisis services; increased housing stability; improved quality of life, including measures of recovery and resilience; and decreased population level disparities in access to treatment and treatment outcomes.

(2) The ~~((department and the health care))~~ authority must implement a strategy for the improvement of the ~~((adult))~~ behavioral health system.

~~((a) The department must establish a steering committee that includes at least the following members: Behavioral health service recipients and their families; local government; representatives of behavioral health organizations; representatives of county coordinators; law enforcement; city and county jails; tribal representatives; behavioral health service providers, including at least one chemical dependency provider and at least one psychiatric advanced registered nurse practitioner; housing providers; medicaid managed care plan representatives; long term care service providers; organizations representing health care professionals providing services in mental health settings; the Washington state hospital association; the Washington state medical association; individuals with expertise in evidence based and research based behavioral health service practices; and the health care authority.~~

~~(b) The adult behavioral health system improvement strategy must include:~~

~~(i) An assessment of the capacity of the current publicly funded behavioral health services system to provide evidence based, research based, and promising practices;~~

~~(ii) Identification, development, and increased use of evidence based, research based, and promising practices;~~

~~(iii) Design and implementation of a transparent quality management system, including analysis of current system capacity to implement outcomes reporting and development of baseline and improvement targets for each outcome measure provided in this section;~~

~~(iv) Identification and phased implementation of service delivery, financing, or other strategies that will promote improvement of the behavioral health system as described in this section and incentivize the medical care, behavioral health, and long term care service delivery systems to achieve the improvements described in this section and collaborate across systems. The strategies must~~

~~include phased implementation of public reporting of outcome and performance measures in a form that allows for comparison of performance and levels of improvement between geographic regions of Washington; and~~

~~(v) Identification of effective methods for promoting workforce capacity, efficiency, stability, diversity, and safety.~~

~~(e) The department must seek private foundation and federal grant funding to support the adult behavioral health system improvement strategy.~~

~~(d) By May 15, 2014, the Washington state institute for public policy, in consultation with the department, the University of Washington evidence based practice institute, the University of Washington alcohol and drug abuse institute, and the Washington institute for mental health research and training, shall prepare an inventory of evidence based, research based, and promising practices for prevention and intervention services pursuant to subsection (1) of this section. The department shall use the inventory in preparing the behavioral health improvement strategy. The department shall provide the institute with data necessary to complete the inventory.~~

~~(e) By August 1, 2014, the department must report to the governor and the relevant fiscal and policy committees of the legislature on the status of implementation of the behavioral health improvement strategy, including strategies developed or implemented to date, timelines, and costs to accomplish phased implementation of the adult behavioral health system improvement strategy.~~

~~(3) The department must contract for the services of an independent consultant to review the provision of forensic mental health services in Washington state and provide recommendations as to whether and how the state's forensic mental health system should be modified to provide an appropriate treatment environment for individuals with mental disorders who have been charged with a crime while enhancing the safety and security of the public and other patients and staff at forensic treatment facilities. By August 1, 2014, the department must submit a report regarding the recommendations of the independent consultant to the governor and the relevant fiscal and policy committees of the legislature.)~~

Sec. 5011. RCW 43.20C.030 and 2014 c 225 s 67 are each amended to read as follows:

The department of social and health services, in consultation with a university-based evidence-based practice institute entity in Washington, the Washington partnership council on juvenile justice, the child mental health systems of care planning committee, the children, youth, and family advisory committee, the health care authority, the Washington state racial disproportionality advisory committee, a university-based child welfare research entity in Washington state, behavioral health administrative services organizations established in chapter 71.24 RCW, managed care organizations contracted with the authority under chapter 74.09 RCW, the Washington association of

juvenile court administrators, and the Washington state institute for public policy, shall:

(1) Develop strategies to use unified and coordinated case plans for children, youth, and their families who are or are likely to be involved in multiple systems within the department;

(2) Use monitoring and quality control procedures designed to measure fidelity with evidence-based and research-based prevention and treatment programs; and

(3) Utilize any existing data reporting and system of quality management processes at the state and local level for monitoring the quality control and fidelity of the implementation of evidence-based and research-based practices.

Sec. 5012. RCW 43.185.060 and 2014 c 225 s 61 are each amended to read as follows:

Organizations that may receive assistance from the department under this chapter are local governments, local housing authorities, behavioral health administrative services organizations established under chapter 71.24 RCW, nonprofit community or neighborhood-based organizations, federally recognized Indian tribes in the state of Washington, and regional or statewide nonprofit housing assistance organizations.

Eligibility for assistance from the department under this chapter also requires compliance with the revenue and taxation laws, as applicable to the recipient, at the time the grant is made.

Sec. 5013. RCW 43.185.070 and 2015 c 155 s 2 are each amended to read as follows:

(1) During each calendar year in which funds from the housing trust fund or other legislative appropriations are available for use by the department for the housing assistance program, the department must announce to all known interested parties, and through major media throughout the state, a grant and loan application period of at least ninety days' duration. This announcement must be made as often as the director deems appropriate for proper utilization of resources. The department must then promptly grant as many applications as will utilize available funds less appropriate administrative costs of the department as provided in RCW 43.185.050.

(2) In awarding funds under this chapter, the department must:

(a) Provide for a geographic distribution on a statewide basis; and

(b) Until June 30, 2013, consider the total cost and per-unit cost of each project for which an application is submitted for funding under RCW 43.185.050(2) (a) and (j), as compared to similar housing projects constructed or renovated within the same geographic area.

(3) The department, with advice and input from the affordable housing advisory board established in RCW 43.185B.020, or a subcommittee of the affordable housing advisory board, must report recommendations for awarding funds in a cost-effective manner. The report must include an implementation plan, timeline, and any other items the department identifies as important to consider to the legislature by December 1, 2012.

(4) The department must give first priority to applications for projects and activities which utilize existing privately owned housing stock including privately owned housing stock purchased by nonprofit public development authorities and public housing authorities as created in chapter 35.82 RCW. As used in this subsection, privately owned housing stock includes housing that is acquired by a federal agency through a default on the mortgage by the private owner. Such projects and activities must be evaluated under subsection (5) of this section. Second priority must be given to activities and projects which utilize existing publicly owned housing stock. All projects and activities must be evaluated by some or all of the criteria under subsection (5) of this section, and similar projects and activities shall be evaluated under the same criteria.

(5) The department must give preference for applications based on some or all of the criteria under this subsection, and similar projects and activities must be evaluated under the same criteria:

(a) The degree of leveraging of other funds that will occur;

(b) The degree of commitment from programs to provide necessary habilitation and support services for projects focusing on special needs populations;

(c) Recipient contributions to total project costs, including allied contributions from other sources such as professional, craft and trade services, and lender interest rate subsidies;

(d) Local government project contributions in the form of infrastructure improvements, and others;

(e) Projects that encourage ownership, management, and other project-related responsibility opportunities;

(f) Projects that demonstrate a strong probability of serving the original target group or income level for a period of at least twenty-five years;

(g) The applicant has the demonstrated ability, stability and resources to implement the project;

(h) Projects which demonstrate serving the greatest need;

(i) Projects that provide housing for persons and families with the lowest incomes;

(j) Projects serving special needs populations which are under statutory mandate to develop community housing;

(k) Project location and access to employment centers in the region or area;

(l) Projects that provide employment and training opportunities for disadvantaged youth under a youthbuild or youthbuild-type program as defined in RCW 50.72.020;

(m) Project location and access to available public transportation services; and

(n) Projects involving collaborative partnerships between local school districts and either public housing authorities or nonprofit housing providers, that help children of low-income families succeed in school. To receive this preference, the local school district must provide an opportunity for community members to offer input on the proposed project at the first scheduled school board meeting following submission of the grant application to the department.

~~((6) The department may only approve applications for projects for persons with mental illness that are consistent with a behavioral health organization six year capital and operating plan.))~~

Sec. 5014. RCW 43.185.110 and 2014 c 225 s 63 are each amended to read as follows:

The affordable housing advisory board established in RCW 43.185B.020 shall advise the director on housing needs in this state, including housing needs for persons with mental illness or developmental disabilities or youth who are blind or deaf or otherwise disabled, operational aspects of the grant and loan program or revenue collection programs established by this chapter, and implementation of the policy and goals of this chapter. Such advice shall be consistent with policies and plans developed by behavioral health administrative services organizations according to chapter 71.24 RCW for individuals with mental illness and the developmental disabilities planning council for individuals with developmental disabilities.

Sec. 5015. RCW 43.185C.340 and 2016 c 157 s 3 are each amended to read as follows:

(1) Subject to funds appropriated for this specific purpose, the department, in consultation with the office of the superintendent of public instruction, shall administer a grant program that links homeless students and their families with stable housing located in the homeless student's school district. The goal of the program is to provide educational stability for homeless students by promoting housing stability.

(2) The department, working with the office of the superintendent of public instruction, shall develop a competitive grant process to make grant awards of no more than one hundred thousand dollars per school, not to exceed five hundred thousand dollars per school district, to school districts partnered with eligible organizations on implementation of the proposal. For the purposes of this subsection, "eligible organization" means any local government, local housing authority, ~~((regional support network))~~ behavioral health administrative services organization established under chapter 71.24 RCW, nonprofit community or neighborhood-based organization,

federally recognized Indian tribe in the state of Washington, or regional or statewide nonprofit housing assistance organization. Applications for the grant program must include contractual agreements between the housing providers and school districts defining the responsibilities and commitments of each party to identify, house, and support homeless students.

(3) The grants awarded to school districts shall not exceed fifteen school districts per school year. In determining which partnerships will receive grants, preference must be given to districts with a demonstrated commitment of partnership and history with eligible organizations.

(4) Activities eligible for assistance under this grant program include but are not limited to:

(a) Rental assistance, which includes utilities, security and utility deposits, first and last month's rent, rental application fees, moving expenses, and other eligible expenses to be determined by the department;

(b) Transportation assistance, including gasoline assistance for families with vehicles and bus passes;

(c) Emergency shelter; and

(d) Housing stability case management.

(5) All beneficiaries of funds from the grant program must be unaccompanied youth or from very low-income households. For the purposes of this subsection, "very low-income household" means an unaccompanied youth or family or unrelated persons living together whose adjusted income is less than fifty percent of the median family income, adjusted for household size, for the county where the grant recipient is located.

(6)(a) Grantee school districts must compile and report information to the department. The department shall report to the legislature the findings of the grantee, the housing stability of the homeless families, the academic performance of the grantee population, and any related policy recommendations.

(b) Data on all program participants must be entered into and tracked through the Washington homeless client management information system as described in RCW 43.185C.180.

(7) In order to ensure that school districts are meeting the requirements of an approved program for homeless students, the office of the superintendent of public instruction shall monitor the programs at least once every two years. Monitoring shall begin during the 2016-17 school year.

(8) Any program review and monitoring under this section may be conducted concurrently with other program reviews and monitoring conducted by the department. In its review, the office of the superintendent of public instruction shall monitor program components that include but need not be limited to the process used by the district to identify and reach out to homeless students, assessment data and other indicators to determine how well the district is meeting the academic needs of homeless students, district expenditures

used to expand opportunities for these students, and the academic progress of students under the program.

Sec. 5016. RCW 43.380.050 and 2016 c 188 s 6 are each amended to read as follows:

(1) In addition to other powers and duties prescribed in this chapter, the council is empowered to:

- (a) Meet at such times and places as necessary;
- (b) Advise the legislature and the governor on issues relating to reentry and reintegration of offenders;
- (c) Review, study, and make policy and funding recommendations on issues directly and indirectly related to reentry and reintegration of offenders in Washington state, including, but not limited to: Correctional programming and other issues in state and local correctional facilities; housing; employment; education; treatment; and other issues contributing to recidivism;
- (d) Apply for, receive, use, and leverage public and private grants as well as specifically appropriated funds to establish, manage, and promote initiatives and programs related to successful reentry and reintegration of offenders;
- (e) Contract for services as it deems necessary in order to carry out initiatives and programs;
- (f) Adopt policies and procedures to facilitate the orderly administration of initiatives and programs;
- (g) Create committees and subcommittees of the council as is necessary for the council to conduct its business; and
- (h) Create and consult with advisory groups comprising nonmembers. Advisory groups are not eligible for reimbursement under RCW 43.380.060.

(2) Subject to the availability of amounts appropriated for this specific purpose, the council may select an executive director to administer the business of the council.

(a) The council may delegate to the executive director by resolution all duties necessary to efficiently carry on the business of the council. Approval by a majority vote of the council is required for any decisions regarding employment of the executive director.

(b) The executive director may not be a member of the council while serving as executive director.

(c) Employment of the executive director must be confirmed by the senate and terminates after a term of three years. At the end of a term, the council may consider hiring the executive director for an additional three-year term or an extension of a specified period less than three years. The council may fix the compensation of the executive director.

(d) Subject to the availability of amounts appropriated for this specific purpose, the executive director shall reside in and be funded by the department.

(3) In conducting its business, the council shall solicit input and participation from stakeholders interested in reducing recidivism, promoting public safety, and improving community conditions for people reentering the community from incarceration. The council shall consult: The two largest caucuses in the house of representatives; the two largest caucuses in the senate; the governor; local governments; educators; ~~((mental health and substance abuse))~~ behavioral health providers; behavioral health administrative services organizations; managed care organizations; city and county jails; the department of corrections; specialty courts; persons with expertise in evidence-based and research-based reentry practices; and persons with criminal histories and their families.

(4) The council shall submit to the governor and appropriate committees of the legislature a preliminary report of its activities and recommendations by December 1st of its first year of operation, and every two years thereafter.

Sec. 5017. RCW 48.01.220 and 2014 c 225 s 69 are each amended to read as follows:

The activities and operations of ~~((mental health))~~ behavioral health administrative services organizations, ~~((to the extent they pertain to the operation of a medical assistance managed care system in accordance with chapters 71.24 and 74.09 RCW))~~ as defined in RCW 71.24.025, are exempt from the requirements of this title.

Sec. 5018. RCW 66.08.180 and 2011 c 325 s 7 are each amended to read as follows:

Except as provided in RCW 66.24.290(1), moneys in the liquor revolving fund shall be distributed by the board at least once every three months in accordance with RCW 66.08.190, 66.08.200 and 66.08.210. However, the board shall reserve from distribution such amount not exceeding five hundred thousand dollars as may be necessary for the proper administration of this title.

(1) All license fees, penalties, and forfeitures derived under chapter 13, Laws of 1935 from spirits, beer, and wine restaurant; spirits, beer, and wine private club; hotel; spirits, beer, and wine nightclub; spirits, beer, and wine VIP airport lounge; and sports entertainment facility licenses shall every three months be disbursed by the board as follows:

(a) Three hundred thousand dollars per biennium, to the death investigations account for the state toxicology program pursuant to RCW 68.50.107; and

(b) Of the remaining funds:

(i) 6.06 percent to the University of Washington and 4.04 percent to Washington State University for alcoholism and drug abuse research and for the dissemination of such research; and

(ii) 89.9 percent to the general fund to be used by the ~~((department of social and health services))~~ health care

authority solely to carry out the purposes of RCW ((70.96A.050)) 71.24.535;

(2) The first fifty-five dollars per license fee provided in RCW 66.24.320 and 66.24.330 up to a maximum of one hundred fifty thousand dollars annually shall be disbursed every three months by the board to the general fund to be used for juvenile alcohol and drug prevention programs for kindergarten through third grade to be administered by the superintendent of public instruction;

(3) Twenty percent of the remaining total amount derived from license fees pursuant to RCW 66.24.320, 66.24.330, 66.24.350, and 66.24.360, shall be transferred to the general fund to be used by the ((department of social and health services)) health care authority solely to carry out the purposes of RCW ((70.96A.050)) 71.24.535; and

(4) One-fourth cent per liter of the tax imposed by RCW 66.24.210 shall every three months be disbursed by the board to Washington State University solely for wine and wine grape research, extension programs related to wine and wine grape research, and resident instruction in both wine grape production and the processing aspects of the wine industry in accordance with RCW 28B.30.068. The director of financial management shall prescribe suitable accounting procedures to ensure that the funds transferred to the general fund to be used by the department of social and health services and appropriated are separately accounted for.

Sec. 5019. RCW 70.02.010 and 2018 c 201 s 8001 are each amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Conducting: Quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, if the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities; population-based

activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment;

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

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

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

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

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

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

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

(iii) Resolution of internal grievances;

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

(v) Consistent with applicable legal requirements, creating deidentified health care information or a limited dataset for the benefit of the health care provider, health care facility, or third-party payor.

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

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

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

(22) "Information and records related to mental health services" means a type of health care information that relates to all information and records compiled, obtained, or maintained in the course of providing services by a mental health service agency or mental health professional to persons who are receiving or have received services for mental illness. The term includes mental health information contained in a medical bill, registration records, as defined in RCW ((71.05.020)) 70.97.010, and all other records regarding the person maintained by the department, by the authority, by behavioral health administrative services organizations and their staff, managed care organizations contracted with the authority under chapter 74.09 RCW and their staff, and by treatment facilities. The term further includes documents of legal proceedings under chapter 71.05, 71.34, or 10.77 RCW, or somatic health care information. For health care information maintained by a hospital as defined in RCW 70.41.020 or a health care facility or health care provider that participates with a hospital in an organized health care arrangement defined under federal law, "information and records related to mental health services" is limited to information and records of services provided by a mental health professional or information and records of services created by a hospital-operated community behavioral health program as defined in RCW 71.24.025. The term does not include psychotherapy notes.

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

(24) "Institutional review board" means any board, committee, or other group formally designated by an institution, or authorized under federal or state law, to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

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

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

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

(28) "Mental health professional" means a psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary of health under chapter 71.05

RCW, whether that person works in a private or public setting.

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

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

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

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

(33) "Payment" means:

(a) The activities undertaken by:

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

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

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

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

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

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

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

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

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

(A) Name and address;

(B) Date of birth;

(C) Social security number;

(D) Payment history;

(E) Account number; and

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

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

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

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

(37) "Psychotherapy notes" means notes recorded, in any medium, by a mental health professional documenting or analyzing the contents of conversations during a private counseling session or group, joint, or family counseling session, and that are separated from the rest of the individual's medical record. The term excludes mediation prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: Diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

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

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

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

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

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

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

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

(45) "Treatment" means the provision, coordination, or management of health care and related services by one or

more health care providers or health care facilities, including the coordination or management of health care by a health care provider or health care facility with a third party; consultation between health care providers or health care facilities relating to a patient; or the referral of a patient for health care from one health care provider or health care facility to another.

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

Sec. 5020. RCW 70.02.230 and 2018 c 201 s 8002 are each amended to read as follows:

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

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

(a) In communications between qualified professional persons to meet the requirements of chapter 71.05 RCW, in the provision of services or appropriate referrals, or in the course of guardianship proceedings if provided to a professional person:

- (i) Employed by the facility;
- (ii) Who has medical responsibility for the patient's care;
- (iii) Who is a designated crisis responder;
- (iv) Who is providing services under chapter 71.24 RCW;
- (v) Who is employed by a state or local correctional facility where the person is confined or supervised; or
- (vi) Who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW;

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

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

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

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

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

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

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

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

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

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

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

(f) To the attorney of the detained person;

(g) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2), 71.05.340(1)(b), and 71.05.335. The prosecutor must be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information must be disclosed only after giving notice to the committed person and the person's counsel;

(h)(i) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the

public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure must be made by the professional person in charge of the public or private agency or his or her designee and must include the dates of commitment, admission, discharge, or release, authorized or unauthorized absence from the agency's facility, and only any other information that is pertinent to the threat or harassment. The agency or its employees are not civilly liable for the decision to disclose or not, so long as the decision was reached in good faith and without gross negligence.

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

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

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

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

(k) Upon the death of a person. The person's next of kin, personal representative, guardian, or conservator, if any, must be notified. Next of kin who are of legal age and competent must be notified under this section in the following order: Spouse, parents, children, brothers and sisters, and other relatives according to the degree of relation. Access to all records and information compiled, obtained, or maintained in the course of providing services to a deceased patient are governed by RCW 70.02.140;

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

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

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

(ii) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the

person is charged with violating RCW 9.41.040(2)(a)(~~(iii)~~) (iv);

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

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

(o) Pursuant to lawful order of a court;

(p) To qualified staff members of the department, to the authority, to ~~(the director of)~~ behavioral health administrative services organizations, to managed care organizations, to resource management services responsible for serving a patient, or to service providers designated by resource management services as necessary to determine the progress and adequacy of treatment and to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility;

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

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

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

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

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

(A) A health care provider who is providing care to a patient, or to whom a patient has been referred for evaluation or treatment; or

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

(ii) A person authorized to use or disclose information and records related to mental health services under this subsection (2)(u) must take appropriate steps to protect the information and records relating to mental health services.

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

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

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

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

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

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

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

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

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

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/"

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

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

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

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

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

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

- (i) One thousand dollars; or
 - (ii) Three times the amount of actual damages sustained, if any.
- (b) It is not a prerequisite to recovery under this subsection that the plaintiff suffered or was threatened with special, as contrasted with general, damages.
- (c) Any person may bring an action to enjoin the release of confidential information or records concerning him or her or his or her ward, in violation of the provisions of this section, and may in the same action seek damages as provided in this subsection.
- (d) The court may award to the plaintiff, should he or she prevail in any action authorized by this subsection, reasonable attorney fees in addition to those otherwise provided by law.
- (e) If an action is brought under this subsection, no action may be brought under RCW 70.02.170.

Sec. 5021. RCW 70.02.250 and 2018 c 201 s 8004 are each amended to read as follows:

(1) Information and records related to mental health services delivered to a person subject to chapter 9.94A or 9.95 RCW must be released, upon request, by a mental health service agency to department of corrections personnel for whom the information is necessary to carry out the responsibilities of their office. The information must be provided only for the purpose of completing presentence investigations, supervision of an incarcerated person, planning for and provision of supervision of a person, or assessment of a person's risk to the community. The request

must be in writing and may not require the consent of the subject of the records.

(2) The information to be released to the department of corrections must include all relevant records and reports, as defined by rule, necessary for the department of corrections to carry out its duties, including those records and reports identified in subsection (1) of this section.

(3) The authority shall, subject to available resources, electronically, or by the most cost-effective means available, provide the department of corrections with the names, last dates of services, and addresses of specific behavioral health administrative services organizations, managed care organizations contracted with the authority under chapter 74.09 RCW, and mental health service agencies that delivered mental health services to a person subject to chapter 9.94A or 9.95 RCW pursuant to an agreement between the authority and the department of corrections.

(4) The authority, in consultation with the department, the department of corrections, behavioral health administrative services organizations, managed care organizations contracted with the authority under chapter 74.09 RCW, mental health service agencies as defined in RCW 70.02.010, mental health consumers, and advocates for persons with mental illness, shall adopt rules to implement the provisions of this section related to the type and scope of information to be released. These rules must:

- (a) Enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A or 9.95 RCW, including accessing and releasing or disclosing information of persons who received mental health services as a minor; and
- (b) Establish requirements for the notification of persons under the supervision of the department of corrections regarding the provisions of this section.

(5) The information received by the department of corrections under this section must remain confidential and subject to the limitations on disclosure outlined in chapter 71.34 RCW, except as provided in RCW 72.09.585.

(6) No mental health service agency or individual employed by a mental health service agency may be held responsible for information released to or used by the department of corrections under the provisions of this section or rules adopted under this section.

(7) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

(8) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under this chapter.

Sec. 5022. RCW 70.97.010 and 2016 sp.s. c 29 s 419 are each amended to read as follows:

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

(1) "Antipsychotic medications" means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes but is not limited to atypical antipsychotic medications.

(2) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient.

(3) (~~"Chemical dependency" means alcoholism, drug addiction, or dependence on alcohol and one or more other psychoactive chemicals, as the context requires and as those terms are defined in chapter 71.05 RCW.~~)

(4)) "Chemical dependency professional" means a person certified as a chemical dependency professional by the department of health under chapter 18.205 RCW.

((5)) (4) "Commitment" means the determination by a court that an individual should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting.

((6)) (5) "Conditional release" means a modification of a commitment that may be revoked upon violation of any of its terms.

((7)) (6) "Custody" means involuntary detention under chapter 71.05 RCW, uninterrupted by any period of unconditional release from commitment from a facility providing involuntary care and treatment.

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

((9)) (8) "Designated crisis responder" has the same meaning as in chapter 71.05 RCW.

((10)) (9) "Detention" or "detain" means the lawful confinement of an individual under chapter 71.05 RCW.

((11)) (10) "Discharge" means the termination of facility authority. The commitment may remain in place, be terminated, or be amended by court order.

((12)) (11) "Enhanced services facility" means a facility that provides treatment and services to persons for whom acute inpatient treatment is not medically necessary and who have been determined by the department to be inappropriate for placement in other licensed facilities due to the complex needs that result in behavioral and security issues.

((13)) (12) "Expanded community services program" means a nonsecure program of enhanced behavioral and residential support provided to long-term and residential care providers serving specifically eligible clients who would otherwise be at risk for hospitalization at state hospital geriatric units.

((14)) (13) "Facility" means an enhanced services facility.

((15)) (14) "Gravely disabled" means a condition in which an individual, as a result of a mental disorder, as a result of the use of alcohol or other psychoactive chemicals, or both:

(a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or

(b) Manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety.

((16)) (15) "History of one or more violent acts" refers to the period of time ten years before the filing of a petition under this chapter or chapter 71.05 RCW, excluding any time spent, but not any violent acts committed, in a mental health facility or a long-term alcoholism or drug treatment facility, or in confinement as a result of a criminal conviction.

((17)) (16) "Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington.

((18)) (17) "Likelihood of serious harm" means:

(a) A substantial risk that:

(i) Physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself;

(ii) Physical harm will be inflicted by an individual upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or

(iii) Physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or

(b) The individual has threatened the physical safety of another and has a history of one or more violent acts.

((19)) (18) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

((20)) (19) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary under the authority of chapter 71.05 RCW.

((21)) (20) "Professional person" means a mental health professional and also means a physician, registered nurse, and such others as may be defined in rules adopted by the secretary pursuant to the provisions of this chapter.

~~((22))~~ (21) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology.

~~((23))~~ (22) "Psychologist" means a person who has been licensed as a psychologist under chapter 18.83 RCW.

~~((24))~~ (23) "Registration records" include all the records of the authority, department, behavioral health administrative services organizations, managed care organizations, treatment facilities, and other persons providing services to ~~((the department, county departments, or facilities))~~ such entities which identify individuals who are receiving or who at any time have received services for mental illness.

~~((25))~~ (24) "Release" means legal termination of the commitment under chapter 71.05 RCW.

~~((26))~~ (25) "Resident" means a person admitted to an enhanced services facility.

~~((27))~~ (26) "Secretary" means the secretary of the department or the secretary's designee.

~~((28))~~ (27) "Significant change" means:

(a) A deterioration in a resident's physical, mental, or psychosocial condition that has caused or is likely to cause clinical complications or life-threatening conditions; or

(b) An improvement in the resident's physical, mental, or psychosocial condition that may make the resident eligible for release or for treatment in a less intensive or less secure setting.

~~((29))~~ (28) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010.

~~((30))~~ (29) "Treatment" means the broad range of emergency, detoxification, residential, inpatient, and outpatient services and care, including diagnostic evaluation, mental health or ~~((chemical dependency))~~ substance use disorder education and counseling, medical, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling, which may be extended to persons with mental disorders, ~~((chemical dependency))~~ substance use disorders, or both, and their families.

~~((31))~~ (30) "Treatment records" include registration and all other records concerning individuals who are receiving or who at any time have received services for mental illness, which are maintained by the department or the health care authority, by behavioral health administrative services organizations ~~((and))~~ or their staffs, managed care organizations contracted with the health care authority under chapter 74.09 RCW or their staffs, and by treatment facilities. "Treatment records" do not include notes or records maintained for personal use by an individual providing treatment services for the department, the health

care authority, behavioral health administrative services organizations, managed care organizations, or a treatment facility if the notes or records are not available to others.

~~((32))~~ (31) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property.

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

Sec. 5023. RCW 70.320.010 and 2014 c 225 s 73 are each amended to read as follows:

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

(1) "Authority" means the health care authority.

(2) "Department" means the department of social and health services.

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

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

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

(6) "Service coordination organization" or "service contracting entity" means the authority and department, or an entity that may contract with the state to provide, directly or through subcontracts, a comprehensive delivery system of medical, behavioral, long-term care, or social support services, including entities such as ~~((behavioral health organizations as defined in RCW 71.24.025,))~~ managed care organizations that provide medical services to clients under chapter 74.09 RCW and RCW 71.24.380, ((counties providing chemical dependency services under chapters

~~74.50 and 70.96A RCW,))~~ and area agencies on aging providing case management services under chapter 74.39A RCW.

Sec. 5024. RCW 72.09.350 and 2018 c 201 s 9011 are each amended to read as follows:

(1) The department of corrections and the University of Washington may enter into a collaborative arrangement to provide improved services for offenders with mental illness with a focus on prevention, treatment, and reintegration into society. The participants in the collaborative arrangement may develop a strategic plan within sixty days after May 17, 1993, to address the management of offenders with mental illness within the correctional system, facilitating their reentry into the community and the mental health system, and preventing the inappropriate incarceration of individuals with mental illness. The collaborative arrangement may also specify the establishment and maintenance of a corrections mental health center located at McNeil Island corrections center. The collaborative arrangement shall require that an advisory panel of key stakeholders be established and consulted throughout the development and implementation of the center. The stakeholders advisory panel shall include a broad array of interest groups drawn from representatives of mental health, criminal justice, and correctional systems. The stakeholders advisory panel shall include, but is not limited to, membership from: The department of corrections, the department of social and health services (~~mental health division and division of juvenile rehabilitation~~), the health care authority, behavioral health administrative services organizations, managed care organizations under chapter 74.09 RCW, local and regional law enforcement agencies, the sentencing guidelines commission, county and city jails, mental health advocacy groups for individuals with mental illness or developmental disabilities, the traumatically brain-injured, and the general public. The center established by the department of corrections and University of Washington, in consultation with the stakeholder advisory groups, shall have the authority to:

(a) Develop new and innovative treatment approaches for corrections mental health clients;

(b) Improve the quality of mental health services within the department and throughout the corrections system;

(c) Facilitate mental health staff recruitment and training to meet departmental, county, and municipal needs;

(d) Expand research activities within the department in the area of treatment services, the design of delivery systems, the development of organizational models, and training for corrections mental health care professionals;

(e) Improve the work environment for correctional employees by developing the skills, knowledge, and understanding of how to work with offenders with special chronic mental health challenges;

(f) Establish a more positive rehabilitative environment for offenders;

(g) Strengthen multidisciplinary mental health collaboration between the University of Washington, other groups committed to the intent of this section, and the department of corrections;

(h) Strengthen department linkages between institutions of higher education, public sector mental health systems, and county and municipal corrections;

(i) Assist in the continued formulation of corrections mental health policies;

(j) Develop innovative and effective recruitment and training programs for correctional personnel working with offenders with mental illness;

(k) Assist in the development of a coordinated continuum of mental health care capable of providing services from corrections entry to community return; and

(l) Evaluate all current and innovative approaches developed within this center in terms of their effective and efficient achievement of improved mental health of inmates, development and utilization of personnel, the impact of these approaches on the functioning of correctional institutions, and the relationship of the corrections system to mental health and criminal justice systems. Specific attention should be paid to evaluating the effects of programs on the reintegration of offenders with mental illness into the community and the prevention of inappropriate incarceration of persons with mental illness.

(2) The corrections mental health center may conduct research, training, and treatment activities for the offender with mental illness within selected sites operated by the department. The department shall provide support services for the center such as food services, maintenance, perimeter security, classification, offender supervision, and living unit functions. The University of Washington may develop, implement, and evaluate the clinical, treatment, research, and evaluation components of the mentally ill offender center. The institute of for public policy and management may be consulted regarding the development of the center and in the recommendations regarding public policy. As resources permit, training within the center shall be available to state, county, and municipal agencies requiring the services. Other state colleges, state universities, and mental health providers may be involved in activities as required on a subcontract basis. Community mental health organizations, research groups, and community advocacy groups may be critical components of the center's operations and involved as appropriate to annual objectives. Clients with mental illness may be drawn from throughout the department's population and transferred to the center as clinical need, available services, and department jurisdiction permits.

(3) The department shall prepare a report of the center's progress toward the attainment of stated goals and provide the report to the legislature annually.

Sec. 5025. RCW 72.09.370 and 2018 c 201 s 9012 are each amended to read as follows:

(1) The offender reentry community safety program is established to provide intensive services to offenders identified under this subsection and to thereby promote public safety. The secretary shall identify offenders in confinement or partial confinement who: (a) Are reasonably believed to be dangerous to themselves or others; and (b) have a mental disorder. In determining an offender's dangerousness, the secretary shall consider behavior known to the department and factors, based on research, that are linked to an increased risk for dangerousness of offenders with mental illnesses and shall include consideration of an offender's (~~chemical dependency~~) substance use disorder or abuse.

(2) Prior to release of an offender identified under this section, a team consisting of representatives of the department of corrections, the health care authority, and, as necessary, the indeterminate sentence review board, divisions or administrations within the department of social and health services, specifically including the division of developmental disabilities, the appropriate (~~behavioral health~~) managed care organization contracted with the health care authority, the appropriate behavioral health administrative services organization, and the providers, as appropriate, shall develop a plan, as determined necessary by the team, for delivery of treatment and support services to the offender upon release. In developing the plan, the offender shall be offered assistance in executing a mental health directive under chapter 71.32 RCW, after being fully informed of the benefits, scope, and purposes of such directive. The team may include a school district representative for offenders under the age of twenty-one. The team shall consult with the offender's counsel, if any, and, as appropriate, the offender's family and community. The team shall notify the crime victim/witness program, which shall provide notice to all people registered to receive notice under RCW 72.09.712 of the proposed release plan developed by the team. Victims, witnesses, and other interested people notified by the department may provide information and comments to the department on potential safety risk to specific individuals or classes of individuals posed by the specific offender. The team may recommend: (a) That the offender be evaluated by the designated crisis responder, as defined in chapter 71.05 RCW; (b) department-supervised community treatment; or (c) voluntary community mental health or (~~chemical dependency~~) substance use disorder or abuse treatment.

(3) Prior to release of an offender identified under this section, the team shall determine whether or not an evaluation by a designated crisis responder is needed. If an evaluation is recommended, the supporting documentation shall be immediately forwarded to the appropriate designated crisis responder. The supporting documentation shall include the offender's criminal history, history of judicially required or administratively ordered involuntary antipsychotic medication while in confinement, and any known history of involuntary civil commitment.

(4) If an evaluation by a designated crisis responder is recommended by the team, such evaluation shall occur not more than ten days, nor less than five days, prior to release.

(5) A second evaluation by a designated crisis responder shall occur on the day of release if requested by the team, based upon new information or a change in the offender's mental condition, and the initial evaluation did not result in an emergency detention or a summons under chapter 71.05 RCW.

(6) If the designated crisis responder determines an emergency detention under chapter 71.05 RCW is necessary, the department shall release the offender only to a state hospital or to a consenting evaluation and treatment facility. The department shall arrange transportation of the offender to the hospital or facility.

(7) If the designated crisis responder believes that a less restrictive alternative treatment is appropriate, he or she shall seek a summons, pursuant to the provisions of chapter 71.05 RCW, to require the offender to appear at an evaluation and treatment facility. If a summons is issued, the offender shall remain within the corrections facility until completion of his or her term of confinement and be transported, by corrections personnel on the day of completion, directly to the identified evaluation and treatment facility.

(8) The secretary shall adopt rules to implement this section.

Sec. 5026. RCW 72.09.381 and 2018 c 201 s 9014 are each amended to read as follows:

The secretary of the department of corrections and the director of the health care authority shall, in consultation with the behavioral health administrative services organizations, managed care organizations contracted with the health care authority, and provider representatives, each adopt rules as necessary to implement chapter 214, Laws of 1999.

Sec. 5027. RCW 72.10.060 and 2014 c 225 s 97 are each amended to read as follows:

The secretary shall, for any person committed to a state correctional facility after July 1, 1998, inquire at the time of commitment whether the person had received outpatient mental health treatment within the two years preceding confinement and the name of the person providing the treatment.

The secretary shall inquire of the treatment provider if he or she wishes to be notified of the release of the person from confinement, for purposes of offering treatment upon the inmate's release. If the treatment provider wishes to be notified of the inmate's release, the secretary shall attempt to provide such notice at least seven days prior to release.

At the time of an inmate's release if the secretary is unable to locate the treatment provider, the secretary shall notify the health care authority and the behavioral health administrative services organization in the county the inmate will most likely reside following release.

If the secretary has, prior to the release from the facility, evaluated the inmate and determined he or she

requires postrelease mental health treatment, a copy of relevant records and reports relating to the inmate's mental health treatment or status shall be promptly made available to the offender's present or future treatment provider. The secretary shall determine which records and reports are relevant and may provide a summary in lieu of copies of the records.

Sec. 5028. RCW 72.23.025 and 2014 c 225 s 98 are each amended to read as follows:

(1) It is the intent of the legislature to improve the quality of service at state hospitals, eliminate overcrowding, and more specifically define the role of the state hospitals. The legislature intends that eastern and western state hospitals shall become clinical centers for handling the most complicated long-term care needs of patients with a primary diagnosis of mental disorder. To this end, the legislature intends that funds appropriated for mental health programs, including funds for behavioral health administrative services organizations, managed care organizations contracted with the health care authority, and the state hospitals, be used for persons with primary diagnosis of mental disorder. The legislature finds that establishment of institutes for the study and treatment of mental disorders at both eastern state hospital and western state hospital will be instrumental in implementing the legislative intent.

(2)(a) There is established at eastern state hospital and western state hospital, institutes for the study and treatment of mental disorders. The institutes shall be operated by joint operating agreements between state colleges and universities and the department of social and health services. The institutes are intended to conduct training, research, and clinical program development activities that will directly benefit persons with mental illness who are receiving treatment in Washington state by performing the following activities:

(i) Promote recruitment and retention of highly qualified professionals at the state hospitals and community mental health programs;

(ii) Improve clinical care by exploring new, innovative, and scientifically based treatment models for persons presenting particularly difficult and complicated clinical syndromes;

(iii) Provide expanded training opportunities for existing staff at the state hospitals and community mental health programs;

(iv) Promote bilateral understanding of treatment orientation, possibilities, and challenges between state hospital professionals and community mental health professionals.

(b) To accomplish these purposes the institutes may, within funds appropriated for this purpose:

(i) Enter joint operating agreements with state universities or other institutions of higher education to accomplish the placement and training of students and faculty in psychiatry, psychology, social work, occupational

therapy, nursing, and other relevant professions at the state hospitals and community mental health programs;

(ii) Design and implement clinical research projects to improve the quality and effectiveness of state hospital services and operations;

(iii) Enter into agreements with community mental health service providers to accomplish the exchange of professional staff between the state hospitals and community mental health service providers;

(iv) Establish a student loan forgiveness and conditional scholarship program to retain qualified professionals at the state hospitals and community mental health providers when the secretary has determined a shortage of such professionals exists.

(c) Notwithstanding any other provisions of law to the contrary, the institutes may enter into agreements with the department or the state hospitals which may involve changes in staffing necessary to implement improved patient care programs contemplated by this section.

(d) The institutes are authorized to seek and accept public or private gifts, grants, contracts, or donations to accomplish their purposes under this section.

Sec. 5029. RCW 74.09.758 and 2014 c 223 s 7 are each amended to read as follows:

(1) The authority and the department may restructure medicaid procurement of health care services and agreements with managed care systems on a phased basis to better support integrated physical health, mental health, and ~~((chemical dependency))~~ substance use disorder treatment, consistent with assumptions in Second Substitute Senate Bill No. 6312, Laws of 2014, and recommendations provided by the behavioral health task force. The authority and the department may develop and utilize innovative mechanisms to promote and sustain integrated clinical models of physical and behavioral health care.

(2) The authority and the department may incorporate the following principles into future medicaid procurement efforts aimed at integrating the delivery of physical and behavioral health services:

(a) Medicaid purchasing must support delivery of integrated, person-centered care that addresses the spectrum of individuals' health needs in the context of the communities in which they live and with the availability of care continuity as their health needs change;

(b) Accountability for the client outcomes established in RCW 43.20A.895 (as recodified by this act) and 71.36.025 and performance measures linked to those outcomes;

(c) Medicaid benefit design must recognize that adequate preventive care, crisis intervention, and support services promote a recovery-focused approach;

(d) Evidence-based care interventions and continuous quality improvement must be enforced through contract specifications and performance measures that

provide meaningful integration at the patient care level with broadly distributed accountability for results;

(e) Active purchasing and oversight of medicaid managed care contracts is a state responsibility;

(f) A deliberate and flexible system change plan with identified benchmarks to promote system stability, provide continuity of treatment for patients, and protect essential existing behavioral health system infrastructure and capacity; and

(g) Community and organizational readiness are key determinants of implementation timing; a phased approach is therefore desirable.

(3) The principles identified in subsection (2) of this section are not intended to create an individual entitlement to services.

(4) The authority shall increase the use of value-based contracting, alternative quality contracting, and other payment incentives that promote quality, efficiency, cost savings, and health improvement, for medicaid and public employee purchasing. The authority shall also implement additional chronic disease management techniques that reduce the subsequent need for hospitalization or readmissions. It is the intent of the legislature that the reforms the authority implements under this subsection are anticipated to reduce extraneous medical costs, across all medical programs, when fully phased in by fiscal year 2017 to generate budget savings identified in the omnibus appropriations act.

Sec. 5030. RCW 74.34.020 and 2018 c 201 s 9016 are each amended to read as follows:

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

(1) "Abandonment" means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

(2) "Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and personal exploitation of a vulnerable adult, and improper use of restraint against a vulnerable adult which have the following meanings:

(a) "Sexual abuse" means any form of nonconsensual sexual conduct, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse also includes any sexual conduct between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that

facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(b) "Physical abuse" means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, or prodding.

(c) "Mental abuse" means a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling, or swearing.

(d) "Personal exploitation" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

(e) "Improper use of restraint" means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline or in a manner that: (i) Is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW; (ii) is not medically authorized; or (iii) otherwise constitutes abuse under this section.

(3) "Chemical restraint" means the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has the temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

(4) "Consent" means express written consent granted after the vulnerable adult or his or her legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

(5) "Department" means the department of social and health services.

(6) "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, assisted living facilities; chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36 RCW, soldiers' homes; ~~((or))~~ chapter 71A.20 RCW, residential habilitation centers; or any other facility licensed or certified by the department ~~((or the department of health))~~.

(7) "Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. "Financial exploitation" includes, but is not limited to:

(a) The use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with a vulnerable adult to obtain or use the

property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult;

(b) The breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or a guardianship appointment, that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult; or

(c) Obtaining or using a vulnerable adult's property, income, resources, or trust funds without lawful authority, by a person or entity who knows or clearly should know that the vulnerable adult lacks the capacity to consent to the release or use of his or her property, income, resources, or trust funds.

(8) "Financial institution" has the same meaning as in RCW 30A.22.040 and 30A.22.041. For purposes of this chapter only, "financial institution" also means a "broker-dealer" or "investment adviser" as defined in RCW 21.20.005.

(9) "Hospital" means a facility licensed under chapter 70.41 or 71.12 RCW or a state hospital defined in chapter 72.23 RCW and any employee, agent, officer, director, or independent contractor thereof.

(10) "Incapacitated person" means a person who is at a significant risk of personal or financial harm under RCW 11.88.010(1) (a), (b), (c), or (d).

(11) "Individual provider" means a person under contract with the department to provide services in the home under chapter 74.09 or 74.39A RCW.

(12) "Interested person" means a person who demonstrates to the court's satisfaction that the person is interested in the welfare of the vulnerable adult, that the person has a good faith belief that the court's intervention is necessary, and that the vulnerable adult is unable, due to incapacity, undue influence, or duress at the time the petition is filed, to protect his or her own interests.

(13)(a) "Isolate" or "isolation" means to restrict a vulnerable adult's ability to communicate, visit, interact, or otherwise associate with persons of his or her choosing. Isolation may be evidenced by acts including but not limited to:

(i) Acts that prevent a vulnerable adult from sending, making, or receiving his or her personal mail, electronic communications, or telephone calls; or

(ii) Acts that prevent or obstruct the vulnerable adult from meeting with others, such as telling a prospective visitor or caller that a vulnerable adult is not present, or does not wish contact, where the statement is contrary to the express wishes of the vulnerable adult.

(b) The term "isolate" or "isolation" may not be construed in a manner that prevents a guardian or limited guardian from performing his or her fiduciary obligations under chapter 11.92 RCW or prevents a hospital or facility

from providing treatment consistent with the standard of care for delivery of health services.

(14) "Mandated reporter" is an employee of the department; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter 18.130 RCW.

(15) "Mechanical restraint" means any device attached or adjacent to the vulnerable adult's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body. "Mechanical restraint" does not include the use of devices, materials, or equipment that are (a) medically authorized, as required, and (b) used in a manner that is consistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW.

(16) "Neglect" means (a) a pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or (b) an act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

(17) "Permissive reporter" means any person, including, but not limited to, an employee of a financial institution, attorney, or volunteer in a facility or program providing services for vulnerable adults.

(18) "Physical restraint" means the application of physical force without the use of any device, for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include (a) briefly holding without undue force a vulnerable adult in order to calm or comfort him or her, or (b) holding a vulnerable adult's hand to safely escort him or her from one area to another.

(19) "Protective services" means any services provided by the department to a vulnerable adult with the consent of the vulnerable adult, or the legal representative of the vulnerable adult, who has been abandoned, abused, financially exploited, neglected, or in a state of self-neglect. These services may include, but are not limited to case management, social casework, home care, placement, arranging for medical evaluations, psychological evaluations, day care, or referral for legal assistance.

(20) "Self-neglect" means the failure of a vulnerable adult, not living in a facility, to provide for himself or herself the goods and services necessary for the vulnerable adult's physical or mental health, and the absence of which impairs or threatens the vulnerable adult's well-being. This definition may include a vulnerable adult who is receiving services

through home health, hospice, or a home care agency, or an individual provider when the neglect is not a result of inaction by that agency or individual provider.

(21) "Social worker" means:

(a) A social worker as defined in RCW 18.320.010(2); or

(b) Anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support, or education of vulnerable adults, or providing social services to vulnerable adults, whether in an individual capacity or as an employee or agent of any public or private organization or institution.

(22) "Vulnerable adult" includes a person:

(a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(b) Found incapacitated under chapter 11.88 RCW; or

(c) Who has a developmental disability as defined under RCW 71A.10.020; or

(d) Admitted to any facility; or

(e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(f) Receiving services from an individual provider; or

(g) Who self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW.

(23) "Vulnerable adult advocacy team" means a team of three or more persons who coordinate a multidisciplinary process, in compliance with chapter 266, Laws of 2017 and the protocol governed by RCW 74.34.320, for preventing, identifying, investigating, prosecuting, and providing services related to abuse, neglect, or financial exploitation of vulnerable adults.

Sec. 5031. RCW 74.34.068 and 2014 c 225 s 103 are each amended to read as follows:

(1) After the investigation is complete, the department may provide a written report of the outcome of the investigation to an agency or program described in this subsection when the department determines from its investigation that an incident of abuse, abandonment, financial exploitation, or neglect occurred. Agencies or programs that may be provided this report are home health, hospice, or home care agencies, or after January 1, 2002, any in-home services agency licensed under chapter 70.127 RCW, a program authorized under chapter 71A.12 RCW, an adult day care or day health program, behavioral health administrative services organizations and managed care organizations authorized under chapter 71.24 RCW, or other agencies. The report may contain the name of the vulnerable adult and the alleged perpetrator. The report shall not disclose the identity of the person who made the report or

any witness without the written permission of the reporter or witness. The department shall notify the alleged perpetrator regarding the outcome of the investigation. The name of the vulnerable adult must not be disclosed during this notification.

(2) The department may also refer a report or outcome of an investigation to appropriate state or local governmental authorities responsible for licensing or certification of the agencies or programs listed in subsection (1) of this section.

(3) The department shall adopt rules necessary to implement this section.

NEW SECTION. Sec. 5032. A new section is added to chapter 71.24 RCW to read as follows:

(1) The legislature finds that behavioral health integration requires parity in the approach to regulation between primary care providers and behavioral health agencies.

(2) Neither the authority nor the department may provide initial documentation requirements for patients receiving care in a behavioral health agency, either in contract or rule, which are substantially more administratively burdensome to complete than initial documentation requirements in primary care settings, unless such documentation is required by federal law or to receive federal funds.

Sec. 5033. RCW 10.77.280 and 2015 1st sp.s. c 7 s 10 are each amended to read as follows:

(1) In order to prioritize goals of accuracy, prompt service to the court, quality assurance, and integration with other services, an office of forensic mental health services is established within the department of social and health services. The office shall be led by a director ~~((on at least the level of deputy assistant secretary within the department))~~ who shall ~~((after a reasonable period of transition,))~~ have responsibility for the following functions:

(a) ~~((Operational control))~~ Coordination of all forensic evaluation services ~~((including specific budget allocation));~~

(b) Responsibility for assuring appropriate training of forensic evaluators;

(c) Development of a system to certify forensic evaluators, and to monitor the quality of forensic evaluation reports;

(d) Liaison with courts, jails, and community mental health programs to ensure the proper coordination of care, flow of information, ~~((coordinate logistical issues, and solve problems in complex circumstances))~~ and transition to community services, when applicable;

(e) Coordination with state hospitals to identify and develop best practice interventions and curricula for services ~~((that are unique))~~ relevant to forensic patients;

~~(f) ((Promotion of congruence across state hospitals where appropriate, and promotion of interventions that flow smoothly into community interventions;~~

~~(g))~~ Coordination with ~~((regional—support networks))~~ the authority, managed care organizations, behavioral health administrative services organizations, community ~~((mental))~~ behavioral health agencies, and the department of corrections regarding community treatment and monitoring of persons on conditional release;

~~((h) Oversight of)~~ (g) Participation in statewide forensic data collection ((and), analysis ((statewide)), and appropriate dissemination of data trends ((and recommendations)); ((and))

(h) Provide data-based recommendations for system changes and improvements; and

(i) Oversight of the development, implementation, and maintenance of community forensic programs and services.

(2) The office of forensic mental health services must have a clearly delineated budget separate from the overall budget for state hospital services.

PART 6

NEW SECTION. Sec. 6001. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 6002. RCW 43.20A.895 is recodified as a section in chapter 71.24 RCW.

NEW SECTION. Sec. 6003. The following sections are decodified:

(1) RCW 28A.310.202 (ESD board—Partnership with behavioral health organization to operate a wraparound model site);

(2) RCW 44.28.800 (Legislation affecting persons with mental illness—Report to legislature);

(3) RCW 71.24.049 (Identification by behavioral health organization—Children's mental health services);

(4) RCW 71.24.320 (Behavioral health organizations—Procurement process—Penalty for voluntary termination or refusal to renew contract);

(5) RCW 71.24.330 (Behavioral health organizations—Contracts with authority—Requirements);

(6) RCW 71.24.360 (Establishment of new behavioral health organizations);

(7) RCW 71.24.382 (Mental health and chemical dependency treatment providers and programs—Vendor rate increases);

(8) RCW 71.24.515 (Chemical dependency specialist services—To be available at children and family services offices—Training in uniform screening);

(9) RCW 71.24.620 (Persons with substance use disorders—Intensive case management pilot projects);

(10) RCW 71.24.805 (Mental health system review—Performance audit recommendations affirmed);

(11) RCW 71.24.810 (Mental health system review—Implementation of performance audit recommendations);

(12) RCW 71.24.840 (Mental health system review—Study of long-term outcomes);

(13) RCW 71.24.860 (Task force—Integrated behavioral health services);

(14) RCW 71.24.902 (Construction);

(15) RCW 72.78.020 (Inventory of services and resources by counties); and

(16) RCW 74.09.872 (Behavioral health organizations—Access to chemical dependency and mental health professionals).

NEW SECTION. Sec. 6004. The following acts or parts of acts are each repealed:

(1) RCW 71.24.110 (Joint agreements of county authorities—Permissive provisions) and 2014 c 225 s 15, 1999 c 10 s 7, 1982 c 204 s 8, & 1967 ex.s. c 111 s 11;

(2) RCW 71.24.310 (Administration of chapters 71.05 and 71.24 RCW through behavioral health organizations—Implementation of chapter 71.05 RCW) and 2018 c 201 s 4015, 2017 c 222 s 1, 2014 c 225 s 40, & 2013 2nd sp.s. c 4 s 994;

(3) RCW 71.24.340 (Behavioral health organizations—Agreements with city and county jails) and 2018 c 201 s 4018, 2014 c 225 s 16, & 2005 c 503 s 13;

(4) RCW 71.24.582 (Review of expenditures for drug and alcohol treatment) and 2018 c 201 s 2002 & 2002 c 290 s 6;

(5) RCW 74.09.492 (Children's mental health—Treatment and services—Authority's duties) and 2017 c 202 s 2;

(6) RCW 74.09.521 (Medical assistance—Program standards for mental health services for children) and 2014 c 225 s 101, 2011 1st sp.s. c 15 s 28, 2009 c 388 s 1, & 2007 c 359 s 11;

(7) RCW 74.09.873 (Tribal-centric behavioral health system) and 2018 c 201 s 2009, 2014 c 225 s 65, & 2013 c 338 s 7;

(8) RCW 74.50.010 (Legislative findings) and 1988 c 163 s 1 & 1987 c 406 s 2;

(9) RCW 74.50.011 (Additional legislative findings) and 1989 1st ex.s. c 18 s 1;

(10)RCW 74.50.035 (Shelter services—Eligibility) and 1989 1st ex.s. c 18 s 2;

(11)RCW 74.50.040 (Client assessment, treatment, and support services) and 1987 c 406 s 5;

(12)RCW 74.50.050 (Treatment services) and 2002 c 64 s 1, 1989 1st ex.s. c 18 s 5, 1988 c 163 s 3, & 1987 c 406 s 6;

(13)RCW 74.50.055 (Treatment services—Eligibility) and 2011 1st sp.s. c 36 s 10 & 1989 1st ex.s. c 18 s 4;

(14)RCW 74.50.060 (Shelter assistance program) and 2011 1st sp.s. c 36 s 33, 2010 1st sp.s. c 8 s 31, 1989 1st ex.s. c 18 s 3, 1988 c 163 s 4, & 1987 c 406 s 7;

(15)RCW 74.50.070 (County multipurpose diagnostic center or detention center) and 2016 sp.s. c 29 s 429 & 1987 c 406 s 8;

(16)RCW 74.50.080 (Rules—Discontinuance of service) and 1989 1st ex.s. c 18 s 6 & 1989 c 3 s 2; and

(17)RCW 74.50.900 (Short title) and 1987 c 406 s 1.

NEW SECTION. Sec. 6005. Section 2009 of this act takes effect July 1, 2026.

NEW SECTION. Sec. 6006. Section 2008 of this act expires July 1, 2026.

NEW SECTION. Sec. 6007. Sections 1003 and 5030 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately.

NEW SECTION. Sec. 6008. Except as provided in sections 6005 and 6007 of this act, this act takes effect January 1, 2020."

Correct the title.

Signed by Representatives Ormsby, Chair; Stokesbary, Ranking Minority Member; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier; Chandler; Cody; Dolan; Dye; Fitzgibbon; Hansen; Hoff; Hudgins; Jinkins; Kraft; Macri; Mosbrucker; Pettigrew; Pollet; Ryu; Schmick; Senn; Springer; Stanford; Steele; Sullivan; Sutherland; Tarleton; Tharinger and Ybarra.

Referred to Committee on Appropriations.

March 28, 2019

SSB 5488 Prime Sponsor, Committee on Human Services, Reentry & Rehabilitation:

Concerning the sentencing of persons under the age of twenty-one years at the time of the commission of a crime. Reported by Committee on Public Safety

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 9.94A.533 and 2018 c 7 s 8 are each amended to read as follows:

(1) The provisions of this section apply to the standard sentence ranges determined by RCW 9.94A.510 or 9.94A.517.

(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the standard sentence range is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by seventy-five percent.

(3) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any firearm enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the firearm enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a firearm enhancement. If the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any firearm enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Five years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) Three years for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Eighteen months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced for any firearm enhancements under (a), (b), and/or (c) of this subsection and the offender has previously been sentenced for any

deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (4)(a), (b), and/or (c) of this section, or both, all firearm enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be:

(i) Granted an extraordinary medical placement when authorized under RCW 9.94A.728(1)(c); or

(ii) Released under the provisions of RCW 9.94A.730;

(f) The firearm enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun or bump-fire stock, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun or bump-fire stock in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a firearm enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(4) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any deadly weapon enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the deadly weapon enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a deadly weapon enhancement. If the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any deadly weapon enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Two years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) One year for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Six months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced under (a), (b), and/or (c) of this subsection for any deadly weapon enhancements and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (3)(a), (b), and/or (c) of this section, or both, all deadly weapon enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all deadly weapon enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be:

(i) Granted an extraordinary medical placement when authorized under RCW 9.94A.728(1)(c); or

(ii) Released under the provisions of RCW 9.94A.730;

(f) The deadly weapon enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun or bump-fire stock, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun or bump-fire stock in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a deadly weapon enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(5) The following additional times shall be added to the standard sentence range if the offender or an accomplice committed the offense while in a county jail or state correctional facility and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice committed one of the crimes listed in this subsection while in a county jail or state correctional facility, and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section:

(a) Eighteen months for offenses committed under RCW 69.50.401(2) (a) or (b) or 69.50.410;

(b) Fifteen months for offenses committed under RCW 69.50.401(2) (c), (d), or (e);

(c) Twelve months for offenses committed under RCW 69.50.4013.

For the purposes of this subsection, all of the real property of a state correctional facility or county jail shall be deemed to be part of that facility or county jail.

(6) An additional twenty-four months shall be added to the standard sentence range for any ranked offense involving a violation of chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435 or 9.94A.827. All enhancements under this subsection shall run consecutively to all other sentencing provisions, for all offenses sentenced under this chapter.

(7) An additional two years shall be added to the standard sentence range for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502 for each prior offense as defined in RCW 46.61.5055.

Notwithstanding any other provision of law, all impaired driving enhancements under this subsection are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other impaired driving enhancements, for all offenses sentenced under this chapter.

An offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(1)(c).

(8)(a) The following additional times shall be added to the standard sentence range for felony crimes committed on or after July 1, 2006, if the offense was committed with sexual motivation, as that term is defined in RCW 9.94A.030. If the offender is being sentenced for more than one offense, the sexual motivation enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to a sexual motivation enhancement. If the offender committed the offense with sexual motivation and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(i) Two years for any felony defined under the law as a class A felony or with a statutory maximum sentence of at least twenty years, or both;

(ii) Eighteen months for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both;

(iii) One year for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both;

(iv) If the offender is being sentenced for any sexual motivation enhancements under (a)(i), (ii), and/or (iii) of this subsection and the offender has previously been sentenced for any sexual motivation enhancements on or after July 1,

2006, under (a)(i), (ii), and/or (iii) of this subsection, all sexual motivation enhancements under this subsection shall be twice the amount of the enhancement listed;

(b) Notwithstanding any other provision of law, all sexual motivation enhancements under this subsection are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other sexual motivation enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be:

(i) Granted an extraordinary medical placement when authorized under RCW 9.94A.728(1)(c); or

(ii) Released under the provisions of RCW 9.94A.730;

(c) The sexual motivation enhancements in this subsection apply to all felony crimes;

(d) If the standard sentence range under this subsection exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a sexual motivation enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced;

(e) The portion of the total confinement sentence which the offender must serve under this subsection shall be calculated before any earned early release time is credited to the offender;

(f) Nothing in this subsection prevents a sentencing court from imposing a sentence outside the standard sentence range pursuant to RCW 9.94A.535.

(9) An additional one-year enhancement shall be added to the standard sentence range for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on or after July 22, 2007, if the offender engaged, agreed, or offered to engage the victim in the sexual conduct in return for a fee. If the offender is being sentenced for more than one offense, the one-year enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to the enhancement. If the offender is being sentenced for an anticipatory offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted, solicited another, or conspired to engage, agree, or offer to engage the victim in the sexual conduct in return for a fee, an additional one-year enhancement shall be added to the standard sentence range determined under subsection (2) of this section. For purposes of this subsection, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW.

(10)(a) For a person age eighteen or older convicted of any criminal street gang-related felony offense for which the person compensated, threatened, or solicited a minor in order to involve the minor in the commission of the felony

offense, the standard sentence range is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by one hundred twenty-five percent. If the standard sentence range under this subsection exceeds the statutory maximum sentence for the offense, the statutory maximum sentence is the presumptive sentence unless the offender is a persistent offender.

(b) This subsection does not apply to any criminal street gang-related felony offense for which involving a minor in the commission of the felony offense is an element of the offense.

(c) The increased penalty specified in (a) of this subsection is unavailable in the event that the prosecution gives notice that it will seek an exceptional sentence based on an aggravating factor under RCW 9.94A.535.

(11) An additional twelve months and one day shall be added to the standard sentence range for a conviction of attempting to elude a police vehicle as defined by RCW 46.61.024, if the conviction included a finding by special allegation of endangering one or more persons under RCW 9.94A.834.

(12) An additional twelve months shall be added to the standard sentence range for an offense that is also a violation of RCW 9.94A.831.

(13) An additional twelve months shall be added to the standard sentence range for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.520 or for vehicular assault committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.522, or for any felony driving under the influence (RCW 46.61.502(6)) or felony physical control under the influence (RCW 46.61.504(6)) for each child passenger under the age of sixteen who is an occupant in the defendant's vehicle. These enhancements shall be mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions. If the addition of a minor child enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(14) An additional twelve months shall be added to the standard sentence range for an offense that is also a violation of RCW 9.94A.832.

(15) Regardless of any provisions in this section, if a person is being sentenced in adult court for a crime committed under age eighteen, the court has full discretion to depart from mandatory sentencing enhancements and to take the particular circumstances surrounding the defendant's youth into account.

Sec. 2. RCW 9.94A.535 and 2016 c 6 s 2 are each amended to read as follows:

The court may impose a sentence outside the standard sentence range for an offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence. Facts

supporting aggravated sentences, other than the fact of a prior conviction, shall be determined pursuant to the provisions of RCW 9.94A.537.

Whenever a sentence outside the standard sentence range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard sentence range shall be a determinate sentence.

If the sentencing court finds that an exceptional sentence outside the standard sentence range should be imposed, the sentence is subject to review only as provided for in RCW 9.94A.585(4).

A departure from the standards in RCW 9.94A.589 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in this section, and may be appealed by the offender or the state as set forth in RCW 9.94A.585 (2) through (6).

(1) Mitigating Circumstances - Court to Consider

The court may impose an exceptional sentence below the standard range if it finds that mitigating circumstances are established by a preponderance of the evidence. The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.

(a) To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.

(b) Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.

(c) The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct.

(d) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

(e) The defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired. Voluntary use of drugs or alcohol is excluded.

(f) The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.

(g) The operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(h) The defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(i) The defendant was making a good faith effort to obtain or provide medical assistance for someone who is experiencing a drug-related overdose.

(j) The current offense involved domestic violence, as defined in RCW 10.99.020, and the defendant suffered a continuing pattern of coercion, control, or abuse by the victim of the offense and the offense is a response to that coercion, control, or abuse.

(k) The defendant was convicted of vehicular homicide, by the operation of a vehicle in a reckless manner and has committed no other previous serious traffic offenses as defined in RCW 9.94A.030, and the sentence is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(l) The defendant is less culpable because of youthfulness at the time of the offense, which is demonstrated by age, susceptibility to peer pressure, lack of sophistication or maturity, or other factors not shown in a fully developed adult.

(2) Aggravating Circumstances - Considered and Imposed by the Court

The trial court may impose an aggravated exceptional sentence without a finding of fact by a jury under the following circumstances:

(a) The defendant and the state both stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence to be consistent with and in furtherance of the interests of justice and the purposes of the sentencing reform act.

(b) The defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(c) The defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished.

(d) The failure to consider the defendant's prior criminal history which was omitted from the offender score calculation pursuant to RCW 9.94A.525 results in a presumptive sentence that is clearly too lenient.

(3) Aggravating Circumstances - Considered by a Jury - Imposed by the Court

Except for circumstances listed in subsection (2) of this section, the following circumstances are an exclusive list of factors that can support a sentence above the standard range. Such facts should be determined by procedures specified in RCW 9.94A.537.

(a) The defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim.

(b) The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance.

(c) The current offense was a violent offense, and the defendant knew that the victim of the current offense was pregnant.

(d) The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:

(i) The current offense involved multiple victims or multiple incidents per victim;

(ii) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;

(iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time; or

(iv) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(e) The current offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition: The presence of ANY of the following may identify a current offense as a major VUCSA:

(i) The current offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so;

(ii) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;

(iii) The current offense involved the manufacture of controlled substances for use by other parties;

(iv) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy;

(v) The current offense involved a high degree of sophistication or planning, occurred over a lengthy period of time, or involved a broad geographic area of disbursement; or

(vi) The offender used his or her position or status to facilitate the commission of the current offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician, or other medical professional).

(f) The current offense included a finding of sexual motivation pursuant to RCW 9.94A.835.

(g) The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time.

(h) The current offense involved domestic violence, as defined in RCW 10.99.020, or stalking, as defined in RCW 9A.46.110, and one or more of the following was present:

(i) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims manifested by multiple incidents over a prolonged period of time;

(ii) The offense occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years; or

(iii) The offender's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.

(i) The offense resulted in the pregnancy of a child victim of rape.

(j) The defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization.

(k) The offense was committed with the intent to obstruct or impair human or animal health care or agricultural or forestry research or commercial production.

(l) The current offense is trafficking in the first degree or trafficking in the second degree and any victim was a minor at the time of the offense.

(m) The offense involved a high degree of sophistication or planning.

(n) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(o) The defendant committed a current sex offense, has a history of sex offenses, and is not amenable to treatment.

(p) The offense involved an invasion of the victim's privacy.

(q) The defendant demonstrated or displayed an egregious lack of remorse.

(r) The offense involved a destructive and foreseeable impact on persons other than the victim.

(s) The defendant committed the offense to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group.

(t) The defendant committed the current offense shortly after being released from incarceration.

(u) The current offense is a burglary and the victim of the burglary was present in the building or residence when the crime was committed.

(v) The offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, the offender knew that the victim was a law enforcement officer, and the victim's status as a law enforcement officer is not an element of the offense.

(w) The defendant committed the offense against a victim who was acting as a good samaritan.

(x) The defendant committed the offense against a public official or officer of the court in retaliation of the public official's performance of his or her duty to the criminal justice system.

(y) The victim's injuries substantially exceed the level of bodily harm necessary to satisfy the elements of the offense. This aggravator is not an exception to RCW 9.94A.530(2).

(z)(i)(A) The current offense is theft in the first degree, theft in the second degree, possession of stolen property in the first degree, or possession of stolen property in the second degree; (B) the stolen property involved is metal property; and (C) the property damage to the victim caused in the course of the theft of metal property is more than three times the value of the stolen metal property, or the theft of the metal property creates a public hazard.

(ii) For purposes of this subsection, "metal property" means commercial metal property, private metal property, or nonferrous metal property, as defined in RCW 19.290.010.

(aa) The defendant committed the offense with the intent to directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage to or for a criminal street gang as defined in RCW 9.94A.030, its reputation, influence, or membership.

(bb) The current offense involved paying to view, over the internet in violation of RCW 9.68A.075, depictions of a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (g).

(cc) The offense was intentionally committed because the defendant perceived the victim to be homeless, as defined in RCW 9.94A.030.

(dd) The current offense involved a felony crime against persons, except for assault in the third degree pursuant to RCW 9A.36.031(1)(k), that occurs in a courtroom, jury room, judge's chamber, or any waiting area or corridor immediately adjacent to a courtroom, jury room, or judge's chamber. This subsection shall apply only: (i) During the times when a courtroom, jury room, or judge's chamber is being used for judicial purposes during court proceedings; and (ii) if signage was posted in compliance with RCW 2.28.200 at the time of the offense.

(ee) During the commission of the current offense, the defendant was driving in the opposite direction of the normal flow of traffic on a multiple lane highway, as defined by RCW 46.04.350, with a posted speed limit of forty-five miles per hour or greater."

Correct the title.

Signed by Representatives Goodman, Chair; Davis, Vice Chair; Sutherland, Assistant Ranking Minority Member; Lovick; Orwall; Pellicciotti and Pettigrew.

MINORITY recommendation: Do not pass. Signed by Representatives Klippert, Ranking Minority Member and Griffey.

Referred to Committee on Rules for second reading.

April 8, 2019

2SSB 5489 Prime Sponsor, Committee on Ways & Means: Establishing a healthy environment for all by addressing environmental health disparities. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Appropriations and without amendment by Committee on State Government & Tribal Relations.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. (1) The legislature recognizes that it is state policy to encourage productive and enjoyable harmony between humankind and the environment, to promote efforts that will prevent or eliminate damage to the environment and the biosphere, and to stimulate the health and welfare of human beings.

(2) The legislature declares it is the public policy of the state to ensure for all people of Washington a safe, healthful, productive, and aesthetically and culturally pleasing surroundings and an environment that supports diversity and variety of individual choice. It is also the continuing policy of the state of Washington to use all practicable means and measures, including financial and technical assistance, in a manner calculated to: (a) Foster and promote the general welfare; (b) create and maintain conditions under which human beings and nature can exist in productive harmony; and (c) fulfill the social, economic, and other requirements of present and future generations of Washington residents.

(3) The legislature finds that there are communities and residents that face greater barriers to a healthy environment because of cumulative environmental hazards and population vulnerabilities.

(4) The legislature further finds that a fundamental principle of environmental justice and our democracy is that people most impacted by government actions should have, to the extent practicable, advance notice of government decisions that could impact them, a clear understanding of the options and their impacts, and a meaningful opportunity to provide input and be heard before decisions are made.

(5) Multiple agency actions recognize the need for public participation and outreach including, but not limited to, education, rule making, enforcement, permitting, grant making, planning, and other government actions. However, individuals and organizations representing vulnerable populations often face barriers to participation, such as limited time, lack of funds for technical experts and reviews, the ability to attend meetings that conflict with work, parenting, child care responsibilities, and language barriers.

(6) While state agencies have identified a need to more effectively target their implementation and

enforcement actions and funding opportunities to those areas and populations in the state that face greater exposure and susceptibility to environmental burdens, there is limited understanding of which communities across the state are most likely highly impacted.

(7) Therefore, the legislature finds that it is necessary to incorporate environmental justice principles into the operations and activities of state agencies in order to achieve state policies of ensuring all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings, ensuring the right of all Washington residents to a healthful environment, and achieving a balance between population and resource use that will permit high standards of living and wide sharing of life's amenities, including through a task force on environmental justice, and agency analysis and consideration of environmental justice in decision making.

NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Cumulative impact analysis" means the analysis tool used by the department of health's Washington tracking network to identify highly impacted communities and vulnerable populations and environmental health disparities in identified areas and populations.

(2) "Environmental burdens" means the cumulative risks to communities caused by historic and current:

(a) Exposure to conventional and toxic hazards in the air, water, and land;

(b) Adverse environmental effects, which include environmental conditions caused or made worse by contamination or pollution or that create vulnerabilities to climate impacts; and

(c) Exposure to hazards made worse by changes in the climate, such as water stress and drought, flooding, wildfire, air quality, ocean acidification, and infectious disease.

(3) "Environmental justice" means the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

(4) "Equity analysis" means an analysis used to determine or evaluate environmental justice considerations.

(5) "Fair treatment" means that no group of people, including racial, ethnic, or socioeconomic groups, should bear disproportionately high exposure to pollution or adverse human health or environmental impacts.

(6) "Highly impacted communities" means communities designated by state agencies based on their findings from implementing the cumulative impact analysis required under section 5 of this act and census tracts that are fully or partially on "Indian country" as defined in 18 U.S.C. Sec. 1151.

(7) "Meaningful involvement" means all groups of people have appropriate access to meaningful public participation in decisions that affect their environment.

(8) "Precautionary approach" means where there are threats of serious or irreversible damage, lack of full scientific certainty is not used as a reason for postponing measures to prevent environmental degradation.

(9) "State agency" means a state agency that is represented on the task force created under section 4 of this act.

(10) "Vulnerable populations" means communities that experience disproportionate cumulative risk from environmental burdens due to:

(a) Adverse socioeconomic factors, including unemployment, high housing and transportation costs relative to income, access to food and health care, and linguistic isolation; and

(b) Sensitivity factors, such as low birth weight and higher rates of hospitalization.

NEW SECTION. Sec. 3. To ensure implementation and adherence to state policies of fostering and promoting the general welfare by ensuring that all people of Washington have a safe and healthful environment, state agencies shall use all practicable means and measures to promote environmental justice and fair treatment.

NEW SECTION. Sec. 4. (1) Subject to the availability of amounts appropriated for this specific purpose, a task force is established to recommend strategies for incorporating environmental justice principles into how state agencies discharge their responsibilities.

(2) The membership of the task force established under this section is as follows:

(a) The director of the department of commerce, or the director's designee;

(b) The director of the department of ecology, or the director's designee;

(c) The executive director of the Puget Sound partnership, or the executive director's designee;

(d) The secretary of the department of transportation, or the secretary's designee;

(e) The secretary of the department of health, or the secretary's designee;

(f) The chair of the energy facility site evaluation council, or the chair's designee;

(g) The chair of the governor's interagency council on health disparities, or the chair's designee;

(h) The commissioner of public lands, or the commissioner's designee;

(i) A member who is well-informed on the principles of environmental justice and with expertise in statewide environmental justice issues, appointed by the governor;

(j) Three members from community-based organizations, appointed by the cochairs specified under subsection (3) of this section, the nominations of which are based upon maintaining a balanced and diverse distribution of ethnic, geographic, gender, sexual orientation, age, socioeconomic status, and occupational representation, where practicable;

(k) A tribal leader, appointed by the governor;

(l) One member from an association representing business interests, appointed by the governor; and

(m) One member from a union or other organized labor association representing worker interests, appointed by the governor.

(3) The representative of statewide environmental justice interests, and the chair of the governor's interagency council on health disparities, or the chair's designee, must cochair the task force.

(4) The governor's interagency council on health disparities shall provide staff support to the task force. The interagency council may work with other agencies, departments, or offices as necessary to provide staff support to the task force.

(5) The task force must submit a final report of its findings and recommendations to the appropriate committees of the legislature and the governor by October 31, 2020, and in compliance with RCW 43.01.036. The goal of the final report is to provide guidance to agencies, the legislature, and the governor, and at a minimum must include the following:

(a) Guidance for state agencies when adopting rules, policies, or guidelines regarding how to use the cumulative impact analysis, defined under section 2 of this act. Guidance must cover how agencies identify highly impacted communities and must be based on best practices and current demographic data. The guidance provided relating to the designation of a highly impacted community must utilize as a basis for this determination the cumulative impact analysis, exposure scenarios developed by tribes for use in remediation decisions at, or to mitigate and address natural resource damage from, national priority list sites pursuant to the federal comprehensive environment response, compensation, and liability act, 42 U.S.C. 9601 et seq., or sites regulated under chapter 70.105D RCW, and additional factors as the task force deems appropriate;

(b) Best practices for increasing public participation and engagement by providing meaningful opportunities for involvement for all people, taking into account barriers to participation that may arise due to race, color, ethnicity, religion, income, or education level. In addition, a specific recommendation on how to best meaningfully consult vulnerable populations, including how to consider exposure scenarios developed by tribes as described in (a) of this subsection, when periodically evaluating and updating the cumulative impact analysis;

(c) Recommendations for establishing measurable goals for reducing environmental health disparities for each community in Washington state and ways in which state agencies may focus their work towards meeting those goals;

(d) Guidelines for prioritizing highly impacted communities and vulnerable populations by identifying and implementing, where practicable, procedures, processes, applications, and reporting requirements so that inspections, enforcement actions, investment of resources, planning and permitting, and public participation are maximized for the purpose of reducing environmental health disparities and advancing a healthy environment for all residents; and

(e) Best practices for how local governments that plan under RCW 36.70A.040 may incorporate environmental justice principles into the development of comprehensive plans to evaluate the ways in which the plans they propose or adopt disproportionately contribute to or threaten displacement of low-income communities and people of color particularly in urban areas, or exacerbate environmental burdens to vulnerable populations.

(6) If time and resources permit, the task force may also include in its final report:

(a) Recommendations for approaches to integrate an analysis of the distribution of environmental burdens across population groups into evaluations performed under the state environmental policy act, chapter 43.21C RCW;

(b) Recommendations for creating and implementing equity analysis into all significant planning, programmatic and policy decision making, and investments. The equity analysis methods may include a process for describing potential risks to, benefits to, and opportunities for highly impacted communities and vulnerable populations;

(c) Best practices and needed resources for cataloging and cross-referencing current research and data collection for programs within all state agencies relating to the health and environment of people of all races, cultures, and income levels, including minority populations and low-income populations of the state;

(d) Recommendations for criteria for identifying and addressing gaps in current research and data collection to inform agency actions, to refine the common cumulative impact methodology, and to identify factors that may impede the achievement of environmental justice; and

(e) Methods for incorporating the precautionary approach into decision making, including permitting, to the extent allowed by law.

(7) By December 1, 2019, and in compliance with RCW 43.01.036, the task force must submit a preliminary report to the appropriate committees of the legislature and the governor if the task force is not able to complete the tasks required under this section because of insufficient funds appropriated to implement this section. The preliminary report must include the following information:

(a) Tasks that could not be completed as a result of insufficient funds appropriated;

(b) The status of the task force's activities; and

(c) Additional resources the task force needs to complete all of the requirements under this section.

(8) Members of the task force who are not state employees must be compensated in accordance with RCW 43.03.240 and are entitled to reimbursement individually for travel expenses incurred in the performance of their duties as members of the task force in accordance with RCW 43.03.050 and 43.03.060. The expenses of the task force must be paid by the governor's interagency council on health disparities.

(9) The task force may form work groups or consult with stakeholders as necessary to assist the task force in carrying out its duties.

(10) The task force must hold four regional meetings to seek input from, present their work plan and proposals to, and receive feedback from communities throughout the state. The following locations must be considered for these meetings: Northwest Washington, central Puget Sound region, south Puget Sound region, southwest Washington, central Washington, and eastern Washington.

(11)(a) Upon adoption of rules, policies, or guidelines related to the cumulative impact analysis, as required under section 5 of this act, each state agency must notify the governor's interagency council on health disparities.

(b) One year after the adoption of rules, policies, or guidelines, and two years thereafter, each state agency must submit a report to the governor, governor's interagency council on health disparities, and appropriate committees of the legislature regarding progress made towards reducing disproportionate environmental burdens and attaining environmental health targets. The report must be submitted in compliance with RCW 43.01.036.

(12) Reports submitted under this section must be available for public inspection and copying through the governor's interagency council on health disparities and must be posted on its web site.

NEW SECTION. **Sec. 5.** (1) State agencies, through rules, policies, or guidelines, shall adopt the use of the cumulative impact analysis to identify highly impacted communities and vulnerable populations and reduce environmental health disparities in identified areas and populations. If the task force created under section 4 of this act issues guidance on how to use the cumulative impact analysis, the rules, policies, or guidelines adopted pursuant to this subsection must be consistent with the task force's guidance.

(2) State agencies may issue policies, guidance, or adopt practices, guidelines, or rules as necessary to identify highly impacted communities, establish measurable goals for reducing environmental health disparities, and prioritize highly impacted communities and their vulnerable populations in the development, adoption, implementation, and enforcement of environmental laws, regulations, policies, and funding decisions.

(3) If the task force created under section 4 of this act issues guidance on how to use the cumulative impact analysis, then within sixty days after the issuance of the task force's guidance, the department of health shall initiate a process to develop model policies for the purpose of providing uniform rules, policies, or guidelines to all state agencies implementing the task force guidance related to the cumulative impact analysis.

NEW SECTION. Sec. 6. Sections 2 through 5 and 7 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. Sec. 7. This chapter may be known and cited as the HEAL act.

NEW SECTION. Sec. 8. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2019, in the omnibus appropriations act, this act is null and void."

Correct the title.

Signed by Representatives Ormsby, Chair; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; Cody; Dolan; Fitzgibbon; Hansen; Hudgins; Jenkins; Macri; Pettigrew; Pollet; Ryu; Senn; Stanford; Sullivan and Tarleton.

MINORITY recommendation: Do not pass. Signed by Representatives Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier; Chandler; Dye; Hoff; Kraft; Mosbrucker; Schmick; Springer; Steele; Sutherland and Ybarra.

MINORITY recommendation: Without recommendation. Signed by Representative Tharinger.

Referred to Committee on Appropriations.

March 27, 2019

SB 5490 Prime Sponsor, Senator Frockt: Transferring duties of the life sciences discovery fund. Reported by Committee on Innovation, Technology & Economic Development

MAJORITY recommendation: Do pass. Signed by Representatives Hudgins, Chair; Kloba, Vice Chair; Smith, Ranking Minority Member; Boehnke, Assistant Ranking Minority Member; Morris; Slatter; Tarleton; Van Werven and Wylie.

April 8, 2019

SSB 5492 Prime Sponsor, Committee on Law & Justice: Sentencing of motor vehicle-related felonies. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Public Safety.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 9.94A RCW to read as follows:

(1) Notwithstanding the provisions of RCW 9.94A.701 and 9.94A.702 and subject to the provisions of this section, a court may sentence an offender to community custody for a period of six to twelve months when the midpoint of the standard sentence range is greater than one year and the person is being sentenced for one of the following crimes:

(a) Theft of a motor vehicle (RCW 9A.56.065);

(b) Possession of a stolen vehicle (RCW 9A.56.068);

(c) Taking a motor vehicle without permission in the first degree (RCW 9A.56.070);

(d) Taking a motor vehicle without permission in the second degree (RCW 9A.56.075); or

(e) Attempt of (a) or (b) of this subsection.

(2) The department shall conduct an assessment of the offender and identify programming and services that would be appropriate to address the offender's needs. To the extent possible, the department shall make available the programming identified by the assessment while the offender is on community custody.

(3) For purposes of this section, the offender's sentence of incarceration may not exceed the mid-point of the standard sentence range reduced by one-half of the ordered term of community custody.

(4) An offender receiving a sentence under this section is not eligible for earned release time under RCW 9.94A.729 in excess of one-third of the total sentence.

(5) No later than November 1, 2025, the department shall submit a report to the governor and the appropriate committees of the legislature analyzing the effectiveness of supervision in reducing recidivism among offenders committing felonies relating to the theft or taking of a motor vehicle. The department shall consult with the Washington state institute for public policy in guiding its data tracking efforts and preparing the report.

(6) This section expires June 30, 2026.

Sec. 2. RCW 9.94A.501 and 2016 sp.s. c 28 s 1 are each amended to read as follows:

(1) The department shall supervise the following offenders who are sentenced to probation in superior court, pursuant to RCW 9.92.060, 9.95.204, or 9.95.210:

- (a) Offenders convicted of:
- (i) Sexual misconduct with a minor second degree;
 - (ii) Custodial sexual misconduct second degree;
 - (iii) Communication with a minor for immoral purposes; and
 - (iv) Violation of RCW 9A.44.132(2) (failure to register); and
- (b) Offenders who have:
- (i) A current conviction for a repetitive domestic violence offense where domestic violence has been pleaded and proven after August 1, 2011; and
 - (ii) A prior conviction for a repetitive domestic violence offense or domestic violence felony offense where domestic violence has been pleaded and proven after August 1, 2011.
- (2) Misdemeanor and gross misdemeanor offenders supervised by the department pursuant to this section shall be placed on community custody.
- (3) The department shall supervise every felony offender sentenced to community custody pursuant to RCW 9.94A.701 or 9.94A.702 whose risk assessment classifies the offender as one who is at a high risk to reoffend.
- (4) Notwithstanding any other provision of this section, the department shall supervise an offender sentenced to community custody regardless of risk classification if the offender:
- (a) Has a current conviction for a sex offense or a serious violent offense and was sentenced to a term of community custody pursuant to RCW 9.94A.701, 9.94A.702, or 9.94A.507;
 - (b) Has been identified by the department as a dangerous mentally ill offender pursuant to RCW 72.09.370;
 - (c) Has an indeterminate sentence and is subject to parole pursuant to RCW 9.95.017;
 - (d) Has a current conviction for violating RCW 9A.44.132(1) (failure to register) and was sentenced to a term of community custody pursuant to RCW 9.94A.701;
 - (e)(i) Has a current conviction for a domestic violence felony offense where domestic violence has been pleaded and proven after August 1, 2011, and a prior conviction for a repetitive domestic violence offense or domestic violence felony offense where domestic violence was pleaded and proven after August 1, 2011. This subsection (4)(e)(i) applies only to offenses committed prior to July 24, 2015;
 - (ii) Has a current conviction for a domestic violence felony offense where domestic violence was pleaded and proven. The state and its officers, agents, and employees shall not be held criminally or civilly liable for its supervision of an offender under this subsection (4)(e)(ii) unless the state and its officers, agents, and employees acted with gross negligence;

(f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660, ~~((e))~~ 9.94A.670, or section 1 of this act;

(g) Is subject to supervision pursuant to RCW 9.94A.745; or

(h) Was convicted and sentenced under RCW 46.61.520 (vehicular homicide), RCW 46.61.522 (vehicular assault), RCW 46.61.502(6) (felony DUI), or RCW 46.61.504(6) (felony physical control).

(5) The department shall supervise any offender who is released by the indeterminate sentence review board and who was sentenced to community custody or subject to community custody under the terms of release.

(6) The department is not authorized to, and may not, supervise any offender sentenced to a term of community custody or any probationer unless the offender or probationer is one for whom supervision is required under this section or RCW 9.94A.5011.

(7) The department shall conduct a risk assessment for every felony offender sentenced to a term of community custody who may be subject to supervision under this section or RCW 9.94A.5011.

(8) The period of time the department is authorized to supervise an offender under this section may not exceed the duration of community custody specified under RCW 9.94B.050, 9.94A.701 (1) through (8), or 9.94A.702, except in cases where the court has imposed an exceptional term of community custody under RCW 9.94A.535.

Sec. 3. RCW 9.94A.505 and 2015 c 287 s 10 and 2015 c 81 s 1 are each reenacted and amended to read as follows:

(1) When a person is convicted of a felony, the court shall impose punishment as provided in this chapter.

(2)(a) The court shall impose a sentence as provided in the following sections and as applicable in the case:

(i) Unless another term of confinement applies, a sentence within the standard sentence range established in RCW 9.94A.510 or 9.94A.517;

(ii) RCW 9.94A.701 and 9.94A.702, relating to community custody;

(iii) RCW 9.94A.570, relating to persistent offenders;

(iv) RCW 9.94A.540, relating to mandatory minimum terms;

(v) RCW 9.94A.650, relating to the first-time offender waiver;

(vi) RCW 9.94A.660, relating to the drug offender sentencing alternative;

(vii) RCW 9.94A.670, relating to the special sex offender sentencing alternative;

(viii) RCW 9.94A.655, relating to the parenting sentencing alternative;

(ix) RCW 9.94A.507, relating to certain sex offenses;

(x) RCW 9.94A.535, relating to exceptional sentences;

(xi) RCW 9.94A.589, relating to consecutive and concurrent sentences;

(xii) RCW 9.94A.603, relating to felony driving while under the influence of intoxicating liquor or any drug and felony physical control of a vehicle while under the influence of intoxicating liquor or any drug;

(xiii) Section 1 of this act, relating to the theft or taking of a motor vehicle.

(b) If a standard sentence range has not been established for the offender's crime, the court shall impose a determinate sentence which may include not more than one year of confinement; community restitution work; a term of community custody under RCW 9.94A.702 not to exceed one year; and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement and a community custody term under RCW 9.94A.701 if the court finds reasons justifying an exceptional sentence as provided in RCW 9.94A.535.

(3) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(4) If a sentence imposed includes payment of a legal financial obligation, it shall be imposed as provided in RCW 9.94A.750, 9.94A.753, 9.94A.760, and 43.43.7541.

(5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a court may not impose a sentence providing for a term of confinement or community custody that exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(6) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

(7) The sentencing court shall not give the offender credit for any time the offender was required to comply with an electronic monitoring program prior to sentencing if the offender was convicted of one of the following offenses:

(a) A violent offense;

(b) Any sex offense;

(c) Any drug offense;

(d) Reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050;

(e) Assault in the third degree as defined in RCW 9A.36.031;

(f) Assault of a child in the third degree;

(g) Unlawful imprisonment as defined in RCW 9A.40.040; or

(h) Harassment as defined in RCW 9A.46.020.

(8) The court shall order restitution as provided in RCW 9.94A.750 and 9.94A.753.

(9) As a part of any sentence, the court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter. "Crime-related prohibitions" may include a prohibition on the use or possession of alcohol or controlled substances if the court finds that any chemical dependency or substance abuse contributed to the offense.

(10) In any sentence of partial confinement, the court may require the offender to serve the partial confinement in work release, in a program of home detention, on work crew, or in a combined program of work crew and home detention."

Correct the title.

Signed by Representatives Ormsby, Chair; Stokesbary, Ranking Minority Member; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier; Chandler; Cody; Dolan; Dye; Fitzgibbon; Hansen; Hoff; Hudgins; Jinkins; Macri; Mosbrucker; Pettigrew; Pollet; Ryu; Schmick; Senn; Springer; Stanford; Steele; Sullivan; Sutherland; Tarleton; Tharinger and Ybarra.

MINORITY recommendation: Do not pass. Signed by Representative Kraft.

Referred to Committee on Appropriations.

March 26, 2019

SSB 5532 Prime Sponsor, Committee on Ways & Means: Concerning special education. Reported by Committee on Education

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"PART I

INTENT

NEW SECTION. Sec. 101. (1) The state of Washington stands at a critical juncture in the education of students with disabilities. For too long special education in

our state has languished with a piecemeal approach in both funding and practice.

(2) When compared to other states, including those with comparable funding, students with disabilities in Washington lag behind their peers. Washington ranks near the bottom nationally for inclusion of students with disabilities. Only seven states having a lower percentage of students spending eighty percent or more of their day in the general education classroom. The numbers are even more stark for students with intellectual disabilities, where only five percent of students in Washington spend a majority of the day in regular classrooms. Only two states have inclusion rates that are worse.

(3) Washington does not fare much better when it comes to other basic indicators of success. Thirty-four percent of students with disabilities dropped out of school in 2017; only two other states reported worse dropout rates. Only fifty-eight percent of students receiving special education services earned their diploma in 2016. That puts Washington in the bottom thirteen in the nation. It is the legislature's intent to increase the graduation rate of students receiving special education services to seventy percent by 2025.

(4) Inclusive education practices significantly improve outcomes for students with disabilities and have significant benefits for all students in the classroom. It is the legislature's intent to develop best practices for inclusion in numerous settings and to ensure that the best practices are supported statewide.

(5) With this act, the state of Washington will advance expectations and lay a foundation that commits to ensuring every child with a disability has an opportunity to live a full, meaningful, and productive life.

PART II

PROFESSIONAL DEVELOPMENT

NEW SECTION. Sec. 201. A new section is added to chapter 28A.415 RCW to read as follows:

School districts and educational service districts must embed in any professional development provided to general education teachers the best practices for differentiating instruction and learning activities to meet each student's individual needs.

PART III

TRAINING FOR STUDENTS, FAMILIES, SCHOOL STAFF, AND THE COMMUNITY

NEW SECTION. Sec. 301. A new section is added to chapter 43.06B RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, and as described in this section, the office of the education ombuds shall serve as the lead agency to provide information and training to

students, families, educational service district and school district staff, and communities regarding the special education services and disability accommodations processes under the federal individuals with disabilities education act, section 504 of the federal rehabilitation act of 1973, and the federal Americans with disabilities act.

(2)(a) The office of the education ombuds must develop a multicourse training program for students with disabilities, families of students with disabilities, educational service district and school district staff, and community and educational organizations supporting students with disabilities.

(b) The training program must address the components of: A free and appropriate public education, family-school relationships, navigation of the special education services and disability accommodations processes, advocacy by families of students with disabilities, self-advocacy for students with disabilities, and communication strategies and conflict resolution between families and educators.

(c) The training program must be developed, and revised annually, in consultation with students with disabilities and their families, and at least one representative each from: An educational service district or school district, a community-based organization that advocates for students with disabilities, a state organization that represents parents and teachers, and the office of the superintendent of public instruction.

(d) The office of the education ombuds must develop publications, online training, videos, and other resources to supplement the training program.

(3)(a) For the purpose of delivering the training program to students, families, educational service district and school district staff, and communities across the state, the office of the education ombuds must distribute special education outreach ombuds statewide, with the goal of at least one special education outreach ombuds located within the boundaries of each educational service district.

(b) The office of the education ombuds, and its special education outreach ombuds, may deliver the training program in partnership with other entities, such as Washington professional educator standards board-approved teacher preparation programs, educational service districts, school districts, and community and educator organizations that provide professional development or that support students with disabilities.

(4) The office of the education ombuds must make the training program available to other ombuds offices within Washington, as well as nationally.

(5) The office of the education ombuds may charge for the delivery of the training program, or the use of resources, developed under this section.

PART IV

RECOGNITION

Sec. 401. RCW 28A.657.110 and 2013 c 159 s 12 are each amended to read as follows:

(1) By November 1, 2013, the state board of education shall propose rules for adoption establishing an accountability framework that creates a unified system of support for challenged schools that aligns with basic education, increases the level of support based upon the magnitude of need, and uses data for decisions. The board must seek input from the public and interested groups in developing the framework. Based on the framework, the superintendent of public instruction shall design a comprehensive system of specific strategies for recognition, provision of differentiated support and targeted assistance, and, if necessary, requiring intervention in schools and school districts. The superintendent shall submit the system design to the state board of education for review. The state board of education shall recommend approval or modification of the system design to the superintendent no later than January 1, 2014, and the system must be implemented statewide no later than the 2014-15 school year. To the extent state funds are appropriated for this purpose, the system must apply equally to Title I, Title I-eligible, and non-Title I schools in the state.

(2) The state board of education shall develop a Washington achievement index to identify schools and school districts for recognition, for continuous improvement, and for additional state support. The index shall be based on criteria that are fair, consistent, and transparent. Performance shall be measured using multiple outcomes and indicators including, but not limited to, graduation rates and results from statewide assessments. The index shall be developed in such a way as to be easily understood by both employees within the schools and school districts, as well as parents and community members. It is the legislature's intent that the index provide feedback to schools and school districts to self-assess their progress, and enable the identification of schools with exemplary performance and those that need assistance to overcome challenges in order to achieve exemplary performance.

(3) The state board of education, in cooperation with the office of the superintendent of public instruction, shall annually recognize schools for exemplary performance as measured on the Washington achievement index. The state board of education shall have ongoing collaboration with the educational opportunity gap oversight and accountability committee regarding the measures used to measure the closing of the achievement gaps and the recognition provided to the school districts for closing the achievement gaps. Schools with exemplary performance in serving students receiving special education services must be recognized.

(4) In coordination with the superintendent of public instruction, the state board of education shall seek approval from the United States department of education for use of the Washington achievement index and the state system of differentiated support, assistance, and intervention to replace the federal accountability system under P.L. 107-110, the no child left behind act of 2001.

(5) The state board of education shall work with the education data center established within the office of financial management and the technical working group established in RCW 28A.290.020 to determine the feasibility of using the prototypical funding allocation model as not only a tool for allocating resources to schools and school districts but also as a tool for schools and school districts to report to the state legislature and the state board of education on how the state resources received are being used.

PART V

TRANSITION PLANNING

Sec. 501. RCW 28A.155.220 and 2015 c 217 s 2 are each amended to read as follows:

(1) The office of the superintendent of public instruction must establish interagency agreements with the department of social and health services, the department of services for the blind, and any other state agency that provides high school transition services for special education students. Such interagency agreements shall not interfere with existing individualized education programs, nor override any individualized education program team's decision-making power. The purpose of the interagency agreements is to foster effective collaboration among the multiple agencies providing transition services for individualized education program-eligible special education students from the beginning of transition planning, as soon as educationally and developmentally appropriate, through age twenty-one, or through high school graduation, whichever occurs first. Interagency agreements are also intended to streamline services and programs, promote efficiencies, and establish a uniform focus on improved outcomes related to self-sufficiency.

(2)(a) When educationally and developmentally appropriate, the interagency responsibilities and linkages with transition services under subsection (1) of this section must be addressed in a transition plan to a postsecondary setting in the individualized education program of a student with disabilities.

(b) Transition planning shall be based upon educationally and developmentally appropriate transition assessments that outline the student's individual needs, strengths, preferences, and interests. Transition assessments may include observations, interviews, inventories, situational assessments, formal and informal assessments, as well as academic assessments.

(c) The transition services that the transition plan must address include activities needed to assist the student in reaching postsecondary goals and courses of study to support postsecondary goals.

(d) Transition activities that the transition plan may address include instruction, related services, community experience, employment and other adult living objectives, daily living skills, and functional vocational evaluation.

(e) Beginning when a student reaches the age of sixteen and continuing until the student reaches the age of twenty-one, or through high school graduation, whichever occurs first, a representative from the division of vocational rehabilitation in the department of social and health services must attend individualized education program meetings to assist students with transition planning when requested by a member of a student's individualized education program team.

(f) When educationally and developmentally appropriate, a discussion must take place with the student and parents, and others as needed, to determine the postsecondary goals or postschool vision for the student. This discussion may be included as part of an annual individualized education program review, high school and beyond plan meeting, or any other meeting that includes parents, students, and educators. The postsecondary goals included in the transition plan shall be goals that are measurable and must be based on appropriate transition assessments related to training, education, employment, and independent living skills, when necessary. The goals must also be based on the student's needs, while considering the strengths, preferences, and interests of the student. During this discussion, students and parents must be provided with information about the Washington achieving a better life experience program, defined in RCW 43.330.460, including information on eligibility, benefits, and Washington achieving a better life experience program account creation.

~~((f))~~ (g) As the student gets older, changes in the transition plan may be noted in the annual update of the student's individualized education program.

~~((g))~~ (h) A student with disabilities who has a high school and beyond plan may use the plan to comply with the transition plan required under this subsection (2).

(3) To the extent that data is available through data-sharing agreements established by the education data center under RCW 43.41.400, the education data center must monitor the following outcomes for individualized education program-eligible special education students after high school graduation:

(a) The number of students who, within one year of high school graduation:

(i) Enter integrated employment paid at the greater of minimum wage or competitive wage for the type of employment, with access to related employment and health benefits; or

(ii) Enter a postsecondary education or training program focused on leading to integrated employment;

(b) The wages and number of hours worked per pay period;

(c) The impact of employment on any state and federal benefits for individuals with disabilities;

(d) Indicators of the types of settings in which students who previously received transition services primarily reside;

(e) Indicators of improved economic status and self-sufficiency;

(f) Data on those students for whom a postsecondary or integrated employment outcome does not occur within one year of high school graduation, including:

(i) Information on the reasons that the desired outcome has not occurred;

(ii) The number of months the student has not achieved the desired outcome; and

(iii) The efforts made to ensure the student achieves the desired outcome.

(4) To the extent that the data elements in subsection (3) of this section are available to the education data center through data-sharing agreements, the office of the superintendent of public instruction must prepare an annual report using existing resources and submit the report to the legislature.

PART VI

COOPERATIVE PROGRAMS

NEW SECTION. Sec. 601. A new section is added to chapter 28A.155 RCW to read as follows:

(1) School districts are encouraged to participate in the establishment of, or continuation of existing, cooperative programs between or among school districts, or educational service districts and school districts, to provide special education and related services to eligible students with disabilities.

(2) Prior to the 2020-21 school year and every five years thereafter, each special education cooperative must apply for approval from the office of the superintendent of public instruction.

PART VII

ADVISORY GROUP AND DEMONSTRATION PROJECTS

NEW SECTION. Sec. 701. (1) The office of the superintendent of public instruction must convene an advisory group to design a coordinated and responsive system for meeting the diverse needs of students with disabilities.

(2) The advisory group must:

(a) Review state and federal laws and state policies related to special education, including those related to least restrictive environment;

(b) Review research on the following topics:

(i) Improving achievement and postsecondary outcomes for students with disabilities;

(ii) Creating an inclusive educational environment;

(iii) Best practices to provide a continuum of services for students receiving special education services;

(iv) Effective implementation at the school district office, through the building principal, and using teacher teams;

(v) Best practices to train teachers and paraeducators on the use of inclusive educational practices; and

(vi) The costs of implementing and maintaining an inclusive education model compared to the current model;

(c) Establish a common language, including use of the following terms:

(i) Continuum of services;

(ii) Coteaching;

(iii) Strategic intervention;

(iv) General education provision of specially designed instruction; and

(v) Adult support models and plans;

(d) Review, discuss, and plan for the realities of implementing inclusive education practices;

(e) Develop an inclusive education implementation plan template to be used by local education agencies interested in applying for designation as a special education demonstration project under section 702 of this act. The template must include components of the application described in section 702(2) of this act and must specify that the inclusive education implementation plan must:

(i) Only be implemented in schools where the principal is in full support of inclusive education practices;

(ii) Create a building coalition to support implementation;

(iii) Provide staff with support and training;

(iv) Celebrate student and staff achievement; and

(v) Provide staff release time for planning and collaboration;

(f) Develop an inclusive education guidance document for local education agencies based on best practices learned from the special education demonstration projects designated under section 702 of this act;

(g) Recommend a technical assistance structure and a professional learning structure to support local education agencies in improving instructional practices and systems of meeting the diverse needs of students with disabilities; and

(h) Review the feedback from educators, students, and families gathered by the special education demonstration projects designated under section 702 of this act.

(3) The office of the superintendent of public instruction must appoint the following members to the advisory group:

(a) One representative each of the following groups at the office of the superintendent of public instruction:

(i) The special education department;

(ii) The learning and teaching department;

(iii) The bilingual education advisory committee;

(iv) The center for the improvement of student learning, established under RCW 28A.300.130; and

(v) The special education advisory council;

(b) A representative of the University of Washington's disabilities, opportunities, internetworking, and technology center;

(c) A representative of Central Washington University's special education technology center;

(d) A representative of the Washington professional educator standards board;

(e) A general education teacher and a special education teacher, both nominated by an association of educators;

(f) A parent of a student receiving special education services;

(g) Three individuals who represent organizations advocating for equity, access, and improving outcomes for students with disabilities, with one individual representing each of the following disability perspectives: Intellectual or developmental, mental health or physical health, and learning disability. The selected individuals must be either an individual with a disability or a parent of a student receiving, or who has received, special education services. At least one of the selected individuals must be familiar with research on inclusive education or improving outcomes for students with disabilities;

(h) A representative of the office of the education ombuds; and

(i) One or two representatives each from the special education demonstration projects designated under section 702 of this act.

(4) The members of the advisory group must select cochair. One cochair must be an individual with a disability or a parent of a student receiving, or who has received, special education services and the other cochair must be an educator.

(5) By November 1, 2019, and by November 1st each year thereafter, and in compliance with RCW 43.01.036, the advisory group must coordinate with the office of the superintendent of public instruction to submit a report to the appropriate committees of the legislature. The report must summarize the advisory group's activities over the prior year and the progress of the special education demonstration projects designated under section 702 of this act. The report must also recommend any changes to state laws or policies necessary to support the improvement of instructional practices and systems to meet the diverse needs of students with disabilities, such as changes related to

inclusive education practices, regional and school-level coordination, educator release time, school climate and culture, professional learning, use of multitiered systems of support, and blending resource streams.

(6) Staff support for the advisory group must be provided by the office of the superintendent of public instruction.

(7) The advisory group must meet at least quarterly.

(8) This section expires August 1, 2023.

NEW SECTION. Sec. 702. (1) By September 1, 2019, the office of the superintendent of public instruction must develop, and broadly publicize, a process for local education agencies to apply to have one or more schools designated as a special education demonstration project.

(2) Local education agencies interested in having one or more schools designated as a special education demonstration project must submit an application to the office of the superintendent of public instruction by January 6, 2020. The application must be developed in collaboration with educators, parents of students with disabilities, and community partners. The local education agency must use the inclusive education implementation plan template developed by the advisory group described in section 701 of this act to:

(a) Define the scope of the special education demonstration project and describe why designation would support the school's ability to improve its instructional practices and systems to meet the diverse needs of students with disabilities;

(b) Enumerate specific, research-based, inclusive education practices to be carried out under the designation;

(c) Justify each request for waiver of state statutes or administrative rules as provided under section 703 of this act;

(d) Justify any requests for waiver of state statutes or administrative rules that are in addition to the waivers authorized under section 703 of this act that are necessary to carry out the proposal;

(e) Identify additional training and supports that will be provided to staff at the local education agency;

(f) Include a written statement that the governing board and administrators are willing to exempt the local education agency from specifically identified local rules, as needed;

(g) Include a written statement that the governing board and local bargaining agents will modify those portions of their local agreements as applicable for the local education agency; and

(h) Include written statements of support from the governing board and administrators, the principal and staff, each local employee association affected by the special education demonstration project proposal, and the local parent organization.

(3)(a) The office of the superintendent of public instruction, in collaboration with its special education advisory council, must develop criteria for reviewing the applications and for evaluating the need for waivers of state statutes and administrative rules as provided under section 703 of this act.

(b) The office of the superintendent of public instruction must review the applications and select up to five local education agencies to designate as special education demonstration projects. The selected local education agencies must be diverse in geography and size. One of the selected local education agencies must have a school or program that removes students receiving special education services from the regular class for eighty percent or more of the school day.

(c) The office of the superintendent of public instruction must notify the applicants of its selection by February 21, 2020.

(4) The designation of the selected schools as special education demonstration projects begins in the 2020-21 school year and lasts for two school years.

(5) The schools selected as special education demonstration projects must:

(a) Execute the inclusive education implementation plan approved by the office of the superintendent of public instruction;

(b) Form collaborative learning teams of teachers with similar grade levels and content areas to help implement the special education demonstration project at the classroom level;

(c) Form an advisory committee to oversee the demonstration project, where the committee includes administrators, educators, parents of students with disabilities, and community partners;

(d) Gather feedback from educators, students, and families on the progress of the special education demonstration project toward meeting the diverse needs of students with disabilities;

(e) Participate in the advisory group created under section 701 of this act; and

(f) Report quarterly to the advisory group created under section 701 of this act and the office of the superintendent of public instruction on the activities and progress of the special education demonstration project in the prior year.

(6) This section expires August 1, 2023.

NEW SECTION. Sec. 703. (1)(a) The superintendent of public instruction and the state board of education, each within the scope of their statutory authority, may grant waivers of state statutes and administrative rules for special education demonstration projects designated under section 702 of this act, as follows:

(i) Waivers may be granted to permit the commingling of funds appropriated by the legislature on a categorical basis for such programs as special education, highly capable students, transitional bilingual instruction, and learning assistance; and

(ii) Waivers may be granted of other administrative rules that in the opinion of the superintendent of public instruction or the state board of education are necessary to be waived in order to implement the special education demonstration projects.

(b) Laws and rules related to the following topics may not be waived: Public health, safety, and civil rights, including protections for individuals with disabilities.

(2) At the request of a local education agency, the superintendent of public instruction may petition the United States department of education or other federal agencies to waive federal regulations necessary to implement the special education demonstration projects designated under section 702 of this act.

(3) Waivers may be granted under this section for a period not to exceed the duration of the special education demonstration projects designated under section 702 of this act.

(4) The superintendent of public instruction and the state board of education must provide an expedited review of requests for waivers for special education demonstration projects designated under section 702 of this act. Requests may be denied if the superintendent of public instruction or the state board of education conclude that the waiver:

(a) Is likely to result in a decrease in academic achievement;

(b) Would jeopardize the receipt of state or federal funds that a local education agency would otherwise be eligible to receive, unless the local education agency submits a written authorization for the waiver acknowledging that receipt of these funds may be jeopardized; or

(c) Would violate state or federal laws or rules that are not authorized to be waived.

(5) This section expires August 1, 2023.

NEW SECTION. Sec. 704. Sections 701 through 703 of this act are each added to chapter 28A.630 RCW.

PART VIII

TECHNICAL ASSISTANCE

NEW SECTION. Sec. 801. A new section is added to chapter 28A.155 RCW to read as follows:

The office of the superintendent of public instruction must establish a technical assistance program to provide resources and best practice guidance on inclusive education practices and improving outcomes for students with disabilities. The components of the technical assistance

program must be informed by the advisory group created under section 701 of this act.

NEW SECTION. Sec. 802. Section 801 of this act takes effect September 1, 2021.

PART IX

MEANINGFUL INDICATORS OF PROGRESS

NEW SECTION. Sec. 901. A new section is added to chapter 28A.300 RCW to read as follows:

(1) The office of the superintendent of public instruction shall identify meaningful indicators of progress toward eliminating the most significant barriers to success, and disparities in outcomes, for students with disabilities or special needs within ten years. The indicators must be quantifiable and based on data that are regularly and reliably collected statewide. For example, the indicators might compare the data for all students to the following data for students with an individualized education program or plan developed under section 504 of the federal rehabilitation act of 1973:

(a) Educational opportunity gaps;

(b) Time spent in a general education classroom;

(c) Discipline rates and rates of restraint or isolation;

(d) Use of medicaid-funded school-based services;

(e) Training and curriculum; and

(f) Postsecondary education and employment outcomes.

(2) Beginning September 1, 2020, and by September 1st every even-numbered year thereafter, and in compliance with RCW 43.01.036, the office of the superintendent of public instruction shall report to the appropriate committees of the legislature on the state's progress toward eliminating the most significant barriers to success, and disparities in outcomes, for students with disabilities or special needs."

Correct the title.

Signed by Representatives Santos, Chair; Dolan, Vice Chair; Paul, Vice Chair; Steele, Ranking Minority Member; McCaslin, Assistant Ranking Minority Member; Volz, Assistant Ranking Minority Member; Bergquist; Caldier; Callan; Corry; Kilduff; Kraft; Ortiz-Self; Rude; Stonier; Thai; Valdez and Ybarra.

Referred to Committee on Appropriations.

March 27, 2019

SSB 5591

Prime Sponsor, Committee on Transportation: Exempting previously registered vehicles from the stolen vehicle check fee. Reported by Committee on Transportation

MAJORITY recommendation: Do pass. Signed by Representatives Fey, Chair; Barkis, Ranking Minority Member; Wylie, 1st Vice Chair; Slatter, 2nd Vice Chair; Valdez, 2nd Vice Chair; Walsh, Assistant Ranking Minority Member; Young, Assistant Ranking Minority Member; Boehnke; Chambers; Chapman; Dent; Doglio; Dufault; Entenman; Eslick; Goehner; Gregerson; Irwin; Kloba; Lovick; McCaslin; Mead; Orcutt; Ortiz-Self; Paul; Pellicciotti; Riccelli; Shea; Shewmake and Van Werven.

MINORITY recommendation: Do not pass. Signed by Representative Ramos.

Referred to Committee on Rules for second reading.

March 26, 2019

SB 5635 Prime Sponsor, Senator Brown: Expanding opportunities for students to pursue mental and behavioral health professions. Reported by Committee on College & Workforce Development

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 28B.50.271 and 2007 c 277 s 101 are each amended to read as follows:

(1) The college board shall develop and implement a workforce education program known as the opportunity grant program to provide financial and other assistance for students enrolled at qualified institutions of higher education in opportunity grant-eligible programs of study as described in RCW 28B.50.273. Students enrolled in the opportunity grant program are eligible for:

(a) Funding for tuition and mandatory fees at the public community and technical college rate, prorated if the credit load is less than full time, paid directly to the educational institution; and

(b) An additional one thousand dollars per academic year for books, tools, and supplies, prorated if the credit load is less than full time.

(2) Funding under subsection (1)(a) and (b) of this section is limited to ~~((a maximum))~~:

(a) Forty-five credits or the equivalent in ~~((an))~~ any opportunity grant-eligible program of study, including required related courses, unless the student is pursuing a certificate or degree under (b) of this subsection. No student may receive opportunity grant funding for more than forty-five credits or for more than three years from initial receipt of grant funds in one or a combination of programs, unless the student is pursuing a certificate or degree under (b) of this subsection; or

(b) Ninety credits for students in an opportunity grant-eligible program of study, including required related courses, that result in a certificate or degree required for employment in a behavioral health profession. Extended opportunity grant funding is limited to no more than a total of ninety credits or for more than four years from initial receipt of grant funds.

(3) Grants awarded under this section are subject to the availability of amounts appropriated for this specific purpose.

Sec. 2. RCW 28B.145.005 and 2018 c 209 s 5 and 2018 c 114 s 1 are each reenacted and amended to read as follows:

The legislature finds that, despite increases in degree production, there remain acute shortages in high employer demand programs of study, particularly in the science, technology, engineering, and mathematics (STEM) and health care fields of study. According to the workforce training and education coordinating board, seventeen percent of Washington businesses had difficulty finding job applicants in 2010. Eleven thousand employers did not fill a vacancy because they lacked qualified job applicants. Fifty-nine percent of projected job openings in Washington state from now until 2017 will require some form of postsecondary education and training.

It is the intent of the legislature to provide jobs and opportunity by making Washington the place where the world's most productive companies find the world's most talented people. The legislature intends to accomplish this through the creation of the opportunity scholarship and the opportunity expansion programs to help mitigate the impact of tuition increases, increase the number of professional-technical certificates, professional-technical degrees, ~~((and))~~ baccalaureate degrees in high employer demand and other programs ~~((and))~~, advanced degrees in health professions ~~((needed in service obligation areas))~~, and invest in programs and students to meet market demands for a knowledge-based economy while filling middle-income jobs with a sufficient supply of skilled workers.

Sec. 3. RCW 28B.145.020 and 2018 c 254 s 2, 2018 c 209 s 7, and 2018 c 114 s 3 are each reenacted and amended to read as follows:

(1) The opportunity scholarship board is created. The board consists of eleven members:

(a) Six members appointed by the governor. For three of the six appointments, the governor shall consider names from a list provided by the president of the senate and the speaker of the house of representatives; and

(b) Five foundation or business and industry representatives appointed by the governor from among the state's most productive industries such as aerospace, manufacturing, health care, information technology, engineering, agriculture, and others, as well as philanthropy. The foundation or business and industry representatives shall be selected from among nominations provided by the

private sector donors to the opportunity scholarship and opportunity expansion programs. However, the governor may request, and the private sector donors shall provide, an additional list or lists from which the governor shall select these representatives.

(2) Board members shall hold their offices for a term of four years from the first day of September and until their successors are appointed. No more than the terms of two members may expire simultaneously on the last day of August in any one year.

(3) The members of the board shall elect one of the business and industry representatives to serve as chair.

(4) Seven members of the board constitute a quorum for the transaction of business. In case of a vacancy, or when an appointment is made after the date of expiration of the term, the governor or the president of the senate or the speaker of the house of representatives, depending upon which made the initial appointment to that position, shall fill the vacancy for the remainder of the term of the board member whose office has become vacant or expired.

(5) The board shall be staffed by a program administrator, under contract with the board and the council.

(6) The purpose of the board is to provide oversight and guidance for the opportunity expansion (~~((program))~~) program, the opportunity scholarship program(~~((s program))~~), and the rural jobs program, in light of established legislative priorities and to fulfill the duties and responsibilities under this chapter, including but not limited to determining eligible education programs and eligible advanced degree programs for purposes of the opportunity scholarship program and rural jobs program. In determining eligible advanced degree programs, the board shall consider advanced degree programs that lead to credentials in health professions that include, but are not limited to, primary care, dental care, behavioral health, and public health. Duties, exercised jointly with the program administrator, include soliciting funds and setting annual fund-raising goals.

(7) The board may report to the governor and the appropriate committees of the legislature with recommendations as to:

(a) Whether some or all of the scholarships should be changed to conditional scholarships that must be repaid in the event the participant does not complete the eligible education program;

(b) A source or sources of funds for the opportunity expansion program in addition to the voluntary contributions of the high-technology research and development tax credit under RCW 82.32.800; and

(c) Whether the program should include a loan repayment or low-interest or no-interest loan component for the advanced degree portion of the program.

~~((8) The board shall report to the governor and the appropriate committees of the legislature by December 1st of each biennium, beginning December 1, 2019, on the following:~~

~~(a) A list of the eligible advanced degree programs and service obligation areas;~~

~~(b) The number of participants in eligible advanced degree programs, the number of participants completing their service obligations in a service obligation area, and the number of participants who have completed their service obligation; and~~

~~(c) The number of participants who did not complete their service obligation who now owe a repayment obligation and the reasons why the participants did not complete their service obligations.)~~

Sec. 4. RCW 28B.145.010 and 2018 c 254 s 9, 2018 c 209 s 6, and 2018 c 114 s 2 are each reenacted and amended to read as follows:

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

(1) "Board" means the opportunity scholarship board.

(2) "Council" means the student achievement council.

(3) "Eligible advanced degree program" means a health professional degree program beyond the baccalaureate level and includes graduate and professional degree programs.

(4) "Eligible county" has the same meaning as "rural county" as defined in RCW 82.14.370 and also includes any county that shares a common border with Canada and has a population of over one hundred twenty-five thousand.

(5) "Eligible education programs" means high employer demand (~~(and other)~~) programs of study as (~~(determined)~~) identified by the board.

(6) "Eligible expenses" means reasonable expenses associated with the costs of acquiring an education such as tuition, books, equipment, fees, room and board, and other expenses as determined by the program administrator in consultation with the council and the state board for community and technical colleges.

(7) "Eligible school district" means a school district of the second class as identified in RCW 28A.300.065(2).

(8) "Eligible student" means a resident student who received his or her high school diploma or high school equivalency certificate as provided in RCW 28B.50.536 in Washington and who:

(a)(i) Has been accepted at a four-year institution of higher education into an eligible education program leading to a baccalaureate degree;

(ii) Will attend a two-year institution of higher education and intends to transfer to an eligible education program at a four-year institution of higher education;

(iii) Has been accepted at an institution of higher education into a professional-technical degree program in an eligible education program; (~~(or)~~)

(iv) Has been accepted at an institution of higher education into a professional-technical certificate program in an eligible education program; or

(v) Has been accepted at an institution of higher education into an eligible advanced degree program ~~((and has agreed to the service obligation established by the board));~~

(b) Declares an intention to obtain a professional-technical certificate, professional-technical degree, ~~((or))~~ baccalaureate degree~~((or))~~, or an advanced degree; and

(c) Has a family income at or below one hundred twenty-five percent of the state median family income at the time the student applies for an opportunity scholarship.

(9) "Gift aid" means financial aid received from the federal Pell grant, the state need grant program in chapter 28B.92 RCW, the college bound scholarship program in chapter 28B.118 RCW, the opportunity grant program in chapter 28B.50 RCW, the opportunity scholarship program in this chapter, or any other state grant, scholarship, or worker retraining program that provides funds for educational purposes with no obligation of repayment. "Gift aid" does not include student loans, work-study programs, the basic food employment and training program administered by the department of social and health services, or other employment assistance programs that provide job readiness opportunities and support beyond the costs of tuition, books, and fees.

(10) "High employer demand program of study" has the same meaning as provided in RCW 28B.50.030.

(11) "Participant" means an eligible student who has received a scholarship under the opportunity scholarship program.

(12) "Professional-technical certificate" means a program as approved by the state board for community and technical colleges under RCW 28B.50.090(7)(c), that is offered by an institution of higher education.

(13) "Professional-technical degree" means a program as approved by the state board for community and technical colleges under RCW 28B.50.090(7)(c), that is offered by an institution of higher education.

(14) "Program administrator" means a private nonprofit corporation registered under Title 24 RCW and qualified as a tax-exempt entity under section 501(c)(3) of the federal internal revenue code.

(15) "Resident student" has the same meaning as provided in RCW 28B.15.012.

(16) "Rural jobs program" means the rural county high employer demand jobs program created in this chapter.

~~((17) "Service obligation" means an obligation by the participant to be employed in a service obligation area in the state for a specific period to be established by the board.~~

~~(18) "Service obligation area" means a location that meets one of the following conditions:~~

~~(a) Has been designated by the council as an eligible site under the health professional conditional scholarship program established under chapter 28B.115 RCW;~~

~~(b) Serves at least forty percent uninsured or medicaid enrolled patients;~~

~~(c) Is located in a rural county as defined in RCW 82.14.370 and serves a combination of uninsured, medicaid enrolled patients, and medicare enrolled patients, equal to at least forty percent of the practice location's total patients; or~~

~~(d) Serves a public agency, nonprofit organization, or local health jurisdiction as defined in RCW 43.70.575 by providing public health services necessary to preserve, protect, and promote the health of the state's population, as determined by the board after consultation with the department of health.))~~

Sec. 5. RCW 28B.145.030 and 2018 c 209 s 8, 2018 c 204 s 2, and 2018 c 114 s 4 are each reenacted and amended to read as follows:

(1) The program administrator shall provide administrative support to execute the duties and responsibilities provided in this chapter, including but not limited to publicizing the program, selecting participants for the opportunity scholarship award, distributing opportunity scholarship awards, and achieving the maximum possible rate of return on investment of the accounts in subsection (2) of this section, while ensuring transparency in the investment decisions and processes. Duties, exercised jointly with the board, include soliciting funds and setting annual fund-raising goals. The program administrator shall be paid an administrative fee as determined by the board.

(2) With respect to the opportunity scholarship program, the program administrator shall:

(a) Establish and manage ~~((three separate))~~ the specified accounts created in (b) of this subsection, into which to receive grants and contributions from private sources as well as state matching funds, and from which to disburse scholarship funds to participants;

(b) Solicit and accept grants and contributions from private sources, via direct payment, pledge agreement, or escrow account, of private sources for deposit into any of the ~~((three))~~ specified accounts created in this subsection (2)(b) upon the direction of the donor and in accordance with this subsection (2)(b):

(i) The "scholarship account," whose principal may be invaded, and from which scholarships must be disbursed for baccalaureate programs beginning no later than December 1, 2011, if, by that date, state matching funds in the amount of five million dollars or more have been received. Thereafter, scholarships shall be disbursed on an annual basis beginning no later than May 1, 2012, and every October 1st thereafter;

(ii) The "student support pathways account," whose principal may be invaded, and from which scholarships may be disbursed for professional-technical certificate or degree programs in the fiscal year following appropriations of state

matching funds. Thereafter, scholarships shall be disbursed on an annual basis;

(iii) The "advanced degrees pathways account," whose principal may be invaded, and from which scholarships may be disbursed for eligible advanced degree programs in the fiscal year following appropriations of state matching funds. Thereafter, scholarships shall be disbursed on an annual basis;

(iv) The "endowment account," from which scholarship moneys may be disbursed for baccalaureate programs from earnings only in years when:

(A) The state match has been made into both the scholarship and the endowment account; and

(B) The state appropriations for the state need grant under RCW 28B.92.010 meet or exceed state appropriations for the state need grant made in the 2011-2013 biennium, adjusted for inflation, and eligibility for state need grant recipients is at least seventy percent of state median family income;

(v) An amount equal to at least fifty percent of all grants and contributions must be deposited into the scholarship account until such time as twenty million dollars have been deposited into the scholarship account, after which time the private donors may designate whether their contributions must be deposited to the scholarship account, the student support pathways account, the advanced degrees pathways account, or the endowment account~~(s)~~. The board and the program administrator must work to maximize private sector contributions to ~~((the scholarship account, the student support pathways account, the advanced degrees pathways account, and the endowment account,))~~ these accounts to maintain a robust scholarship program while simultaneously building the endowment, and to determine the division between the ~~((scholarship, the student support pathways, the advanced degrees pathways, and the endowment))~~ accounts in the case of undesignated grants and contributions, taking into account the need for a long-term funding mechanism and the short-term needs of families and students in Washington. The first five million dollars in state match, as provided in RCW 28B.145.040, shall be deposited into the scholarship account and thereafter the state match shall be deposited into the ~~((three))~~ specified accounts created in this subsection (2)(b) in equal proportion to the private funds deposited in each account, except that no more than one million dollars in state match shall be deposited into the advanced degrees pathways account in a single fiscal biennium; and

(vi) Once moneys in the opportunity scholarship match transfer account are subject to an agreement under RCW 28B.145.050(5) and are deposited in the scholarship account, the student support pathways account, the advanced degrees pathways account, or the endowment account under this section, the state acts in a fiduciary rather than ownership capacity with regard to those assets. Assets in the scholarship account, the student support pathways account, the advanced degrees pathways account, and the endowment account are not considered state money, common cash, or revenue to the state;

(c) Provide proof of receipt of grants and contributions from private sources to the council, identifying the amounts received by name of private source and date, and whether the amounts received were deposited into the scholarship account, the student support pathways account, the advanced degrees pathways account, or the endowment account~~(s)~~;

(d) In consultation with the council and the state board for community and technical colleges, make an assessment of the reasonable annual eligible expenses associated with eligible education programs and eligible advanced degree programs identified by the board;

(e) Determine the dollar difference between tuition fees charged by institutions of higher education in the 2008-09 academic year and the academic year for which an opportunity scholarship is being distributed;

(f) Develop and implement an application, selection, and notification process for awarding opportunity scholarships;

(g) Determine the annual amount of the opportunity scholarship for each selected participant. The annual amount shall be at least one thousand dollars or the amount determined under (e) of this subsection, but may be increased on an income-based, sliding scale basis up to the amount necessary to cover all reasonable annual eligible expenses as assessed pursuant to (d) of this subsection, or to encourage participation in professional-technical certificate programs, professional-technical degree programs, ~~((or))~~ baccalaureate degree programs, or eligible advanced degree programs identified by the board;

(h) Distribute scholarship funds to selected participants. Once awarded, and to the extent funds are available for distribution, an opportunity scholarship shall be automatically renewed as long as the participant annually submits documentation of filing both a free application for federal student aid (FAFSA) and for available federal education tax credits including, but not limited to, the American opportunity tax credit, or if ineligible to apply for federal student aid, the participant annually submits documentation of filing a state financial aid application as approved by the office of student financial assistance; and until the participant withdraws from or is no longer attending the program, completes the program, or has taken the credit or clock hour equivalent of one hundred twenty-five percent of the published length of time of the participant's program, whichever occurs first; and

(i) Notify institutions of scholarship recipients who will attend their institutions and inform them of the terms of the students' eligibility~~(s)~~;

~~(j) Establish a required service obligation for participants enrolled in an eligible advanced degree program, and establish a process for verifying a participant's employment in a service obligation area; and~~

~~(k) Establish a repayment obligation and appeals process for participants who serve less than the required service obligation, unless the program administrator determines the circumstances are beyond the participant's~~

~~control. If the participant is unable to pay the repayment obligation in full, the participant may enter into payment arrangements with the program administrator. The program administrator is responsible for the collection of repayment obligations on behalf of participants who fail to complete their service obligation).~~

(3) With respect to the opportunity expansion program, the program administrator shall:

(a) Assist the board in developing and implementing an application, selection, and notification process for making opportunity expansion awards; and

(b) Solicit and accept grants and contributions from private sources for opportunity expansion awards.

Sec. 6. RCW 28B.145.040 and 2018 c 209 s 9 and 2018 c 114 s 5 are each reenacted and amended to read as follows:

(1) The opportunity scholarship program is established.

(2) The purpose of this scholarship program is to provide scholarships that will help low and middle-income Washington residents earn professional-technical certificates, professional-technical degrees, or baccalaureate degrees in high employer demand and other programs of study and advanced degrees in health professions (~~(needed in service obligation areas)~~), and encourage them to remain in the state to work. The program must be designed for students starting professional-technical certificate or degree programs, students starting at two-year institutions of higher education and intending to transfer to four-year institutions of higher education, students starting at four-year institutions of higher education, and students enrolled in an eligible advanced degree program.

(3) The opportunity scholarship board shall ~~((determine))~~ identify which programs of study ~~((including but not limited to))~~ are high employer demand programs, ~~((are))~~ eligible for purposes of the opportunity scholarship. For eligible advanced degree programs, the board shall limit scholarships to eligible students enrolling in programs that lead to credentials in health professions (~~(needed in service obligation areas)~~).

(4) The source of funds for the program shall be a combination of private grants and contributions and state matching funds. A state match may be earned under this section for private contributions made on or after June 6, 2011. A state match, up to a maximum of fifty million dollars annually, shall be provided beginning the later of January 1, 2014, or January 1st next following the end of the fiscal year in which collections of state retail sales and use tax, state business and occupation tax, and state public utility tax exceed, by ten percent the amounts collected from these tax resources in the fiscal year that ended June 30, 2008, as determined by the department of revenue.

Sec. 7. RCW 28B.145.090 and 2018 c 254 s 3, 2018 c 209 s 10, and 2018 c 114 s 6 are each reenacted and amended to read as follows:

(1) The board may elect to have the state investment board invest the funds in the scholarship account, the student support pathways account, the advanced degrees pathways account, and the endowment account described under RCW 28B.145.030(2)(b). If the board so elects, the state investment board has the full power to invest, reinvest, manage, contract, sell, or exchange investment money in ~~((the three))~~ these accounts. All investment and operating costs associated with the investment of money shall be paid under RCW 43.33A.160 and 43.84.160. With the exception of these expenses, the earnings from the investment of the money shall be retained by the accounts.

(2) All investments made by the state investment board shall be made with the exercise of that degree of judgment and care under RCW 43.33A.140 and the investment policy established by the state investment board.

(3) As deemed appropriate by the state investment board, money in the scholarship account, the student support pathways account, the advanced degrees pathways account, and the endowment account may be commingled for investment with other funds subject to investment by the state investment board.

(4) Members of the state investment board shall not be considered an insurer of the funds or assets and are not liable for any action or inaction.

(5) Members of the state investment board are not liable to the state, to the fund, or to any other person as a result of their activities as members, whether ministerial or discretionary, except for willful dishonesty or intentional violations of law. The state investment board in its discretion may purchase liability insurance for members.

(6) The authority to establish all policies relating to the scholarship account, the student support pathways account, the advanced degrees pathways account, and the endowment account, other than the investment policies as provided in subsections (1) through (3) of this section, resides with the board and program administrator acting in accordance with the principles set forth in this chapter. With the exception of expenses of the state investment board in subsection (1) of this section, disbursements from the scholarship account, the student support pathways account, the advanced degrees pathways account, and the endowment account shall be made only on the authorization of the opportunity scholarship board or its designee, and moneys in the accounts may be spent only for the purposes specified in this chapter.

(7) The state investment board shall routinely consult and communicate with the board on the investment policy, earnings of the accounts, and related needs of the program."

Correct the title.

Signed by Representatives Hansen, Chair; Entenman, Vice Chair; Leavitt, Vice Chair; Van Werven, Ranking

Minority Member; Gildon, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Bergquist; Kraft; Mead; Paul; Pollet; Ramos; Rude; Sells; Slatter and Sutherland.

Referred to Committee on Appropriations.

April 8, 2019

2SSB 5672 Prime Sponsor, Committee on Ways & Means: Concerning adult family home specialty services. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Appropriations and without amendment by Committee on Health Care & Wellness.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 70.128 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the developmental disabilities administration within the department shall work with stakeholders to design and implement services for individuals living in adult family homes who have a primary need of care related to a developmental or intellectual disability. These services must be enhancements or in addition to services currently available, and designed to meet the specific provisions related to the assessment, environment, regulations, provision of care, and training requirements. These services must be enhancements or in addition to services currently available, and designed to support an intentional environment to improve resident quality of life, promote resident safety, including protecting safety in relationships between residents, increase resident length of stay, clarify regulations, streamline training requirements, reduce the need for institutional settings, and attract more adult family home providers to develop such highly needed resources. The recommendations for these services must be completed by June 1, 2020, for consideration and implementation in the 2021-2023 biennium.

(2) Subject to the availability of amounts appropriated for this specific purpose, the aging and long-term support administration within the department shall work with stakeholders to design and implement proposed services for individuals living in adult family homes that are dedicated solely to the care of individuals with dementia, including Alzheimer's disease. These services must be enhancements or in addition to services currently available, and designed to include specific provisions related to the assessment, environment, regulations, provision of care, and training requirements. These services must be designed to support an intentional environment to improve resident quality of life, promote resident safety, including protecting safety in relationships between residents, increase resident

length of stay, clarify regulations, streamline training requirements, reduce the need for institutional settings, and attract more adult family home providers to develop such highly needed resources. The recommendations for these services must be completed by June 1, 2020, for consideration and implementation in the 2021-2023 biennium.

Sec. 2. RCW 70.128.010 and 2007 c 184 s 7 are each amended to read as follows:

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

(1) "Adult family home" means a residential home in which a person or persons provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services.

(2) "Provider" means any person who is licensed under this chapter to operate an adult family home. For the purposes of this section, "person" means any individual, partnership, corporation, association, or limited liability company.

(3) "Department" means the department of social and health services.

(4) "Resident" means an adult in need of personal or special care in an adult family home who is not related to the provider.

(5) "Adults" means persons who have attained the age of eighteen years.

(6) "Home" means an adult family home.

(7) "Imminent danger" means serious physical harm to or death of a resident has occurred, or there is a serious threat to resident life, health, or safety.

(8) "Special care" means care beyond personal care as defined by the department, in rule.

(9) "Capacity" means the maximum number of persons in need of personal or special care permitted in an adult family home at a given time. This number shall include related children or adults in the home and who received special care.

(10) "Resident manager" means a person employed or designated by the provider to manage the adult family home.

(11) "Adult family home licensee" means a provider as defined in this section who does not receive payments from the medicaid and state-funded long-term care programs.

(12) "Adult family home training network" means a nonprofit organization established by the exclusive bargaining representative of adult family homes designated under RCW 41.56.029 with the capacity to provide training, workforce development, and other services to adult family homes.

NEW SECTION. Sec. 3. A new section is added to chapter 70.128 RCW to read as follows:

If the department has any contracts for personal care services with any adult family home represented by an exclusive bargaining representative:

(1) Effective July 1, 2020, training required under this chapter for adult family homes must be available through an adult family home training network.

(2) The exclusive bargaining representative shall designate the adult family home training network.

(3) The parties to the collective bargaining agreement must negotiate a memorandum of understanding to provide for contributions to the adult family home training network. Contributions to the adult family home training network must begin no sooner than January 1, 2020. Contributions to the adult family home training network for fiscal year 2021 must be limited to no more than the amount appropriated for training in the 2019-2021 collective bargaining agreement.

(4) Contributions must be provided to the adult family home training network through a vendor contract executed by the department.

(5) The adult family home training network shall provide reports as required by the department verifying that providers have complied with all training requirements.

NEW SECTION. Sec. 4. A new section is added to chapter 70.128 RCW to read as follows:

(1) By December 1, 2020, the department shall report to the appropriate committees of the legislature on the status of the adult family home training network.

(2) This section expires July 1, 2021.

Sec. 5. RCW 70.128.230 and 2013 c 259 s 5 are each amended to read as follows:

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

(a) "Caregiver" includes all adult family home resident managers and any person who provides residents with hands-on personal care on behalf of an adult family home, except volunteers who are directly supervised.

(b) "Indirect supervision" means oversight by a person who has demonstrated competency in the core areas or has been fully exempted from the training requirements pursuant to this section and is quickly and easily available to the caregiver, but not necessarily on-site.

(2) Training must have three components: Orientation, basic training, and continuing education. All adult family home providers, resident managers, and employees, or volunteers who routinely interact with residents shall complete orientation. Caregivers shall

complete orientation, basic training, and continuing education.

(3) Orientation consists of introductory information on residents' rights, communication skills, fire and life safety, and universal precautions. Orientation must be provided at the facility by appropriate adult family home staff to all adult family home employees before the employees have routine interaction with residents.

(4) Basic training consists of modules on the core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents. Basic training must be outcome-based, and the effectiveness of the basic training must be measured by demonstrated competency in the core areas through the use of a competency test. Basic training must be completed by caregivers within one hundred twenty days of the date on which they begin to provide hands-on care. Until competency in the core areas has been demonstrated, caregivers shall not provide hands-on personal care to residents without direct supervision.

(5) For adult family homes that serve residents with special needs such as dementia, developmental disabilities, or mental illness, specialty training is required of providers and resident managers.

(a) Specialty training consists of modules on the core knowledge and skills that providers and resident managers need to effectively and safely provide care to residents with special needs. Specialty training should be integrated into basic training wherever appropriate. Specialty training must be outcome-based, and the effectiveness of the specialty training measured by demonstrated competency in the core specialty areas through the use of a competency test.

(b) Specialty training must be completed by providers and resident managers before admitting and serving residents who have been determined to have special needs related to mental illness, dementia, or a developmental disability. Should a resident develop special needs while living in a home without specialty designation, the provider and resident manager have one hundred twenty days to complete specialty training.

(6) Continuing education consists of ongoing delivery of information to caregivers on various topics relevant to the care setting and care needs of residents. Competency testing is not required for continuing education. Continuing education is not required in the same calendar year in which basic or modified basic training is successfully completed. Continuing education is required in each calendar year thereafter. If specialty training is completed, the specialty training applies toward any continuing education requirement for up to two years following the completion of the specialty training.

(7) Persons who successfully (~~challenge~~) complete the competency challenge test for basic training are fully exempt from the basic training requirements of this section. Persons who successfully (~~challenge~~) complete the specialty training competency challenge test are fully exempt from the specialty training requirements of this section.

(8) (a) Registered nurses and licensed practical nurses licensed under chapter 18.79 RCW are exempt from any continuing education requirement established under this section.

(b) The department may adopt rules that would exempt licensed persons from all or part of the training requirements under this chapter, if they are (i) performing the tasks for which they are licensed and (ii) subject to chapter 18.130 RCW.

(9) In an effort to improve access to training and education and reduce costs, especially for rural communities, the ~~((coordinated system of long-term care training and education))~~ adult family home training network must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges, private associations, or other entities, as defined by the department.

(10) The adult family home training network shall assist adult family homes that desire to deliver facility-based training with facility designated trainers, or adult family homes that desire to pool their resources to create shared training systems~~((must be encouraged by the department in their efforts))~~. The department shall develop criteria for reviewing and approving trainers and training materials. The department may approve a curriculum based upon attestation by an adult family home administrator that the adult family home's training curriculum addresses basic and specialty training competencies identified by the department, and shall review a curriculum to verify that it meets these requirements. The department may conduct the review as part of the next regularly scheduled inspection authorized under RCW 70.128.070. The department shall rescind approval of any curriculum if it determines that the curriculum does not meet these requirements.

(11) The department shall adopt rules by September 1, 2002, for the implementation of this section.

(12)(a) Except as provided in (b) of this subsection, the orientation, basic training, specialty training, and continuing education requirements of this section commence September 1, 2002, and shall be applied to (i) employees hired subsequent to September 1, 2002; or (ii) existing employees that on September 1, 2002, have not successfully completed the training requirements under RCW 70.128.120 or 70.128.130 and this section. Existing employees who have not successfully completed the training requirements under RCW 70.128.120 or 70.128.130 shall be subject to all applicable requirements of this section.

(b) Beginning January 7, 2012, long-term care workers, as defined in RCW 74.39A.009, employed by an adult family home are also subject to the training requirements under RCW 74.39A.074.

NEW SECTION. Sec. 6. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2019, in the omnibus appropriations act, this act is null and void."

Correct the title.

Signed by Representatives Ormsby, Chair; Stokesbary, Ranking Minority Member; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier; Cody; Dolan; Fitzgibbon; Hansen; Hudgins; Jinkins; Macri; Pettigrew; Pollet; Ryu; Senn; Springer; Stanford; Steele; Sullivan; Tarleton; Tharinger and Ybarra.

MINORITY recommendation: Do not pass. Signed by Representatives Chandler; Dye; Hoff; Kraft; Mosbrucker; Schmick and Sutherland.

Referred to Committee on Appropriations.

March 28, 2019

SSB 5714 Prime Sponsor, Committee on Law & Justice: Concerning the reliability of evidence in criminal proceedings. Reported by Committee on Public Safety

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. INTENT. The legislature recognizes that prosecuting attorneys, law enforcement, and society at large strive for a criminal justice system that minimizes the risk actually innocent people will be convicted. The legislature further recognizes that mistaken identification by witnesses to crime and false testimony by informants who are given benefits in exchange for their testimony have contributed to the conviction of the innocent in Washington state. Through the development of best practices related to the collection of eyewitness evidence and the use of informant witnesses, and the adoption of model guidelines to implement those practices, the legislature aims to improve the quality of such evidence and reduce the risk of wrongful conviction related to these contributing factors.

NEW SECTION. Sec. 2. EYEWITNESS EVIDENCE WORK GROUP. (1) The University of Washington Tacoma shall convene a work group for the purpose of maximizing the reliability of eyewitness evidence collected during criminal investigations.

(2) The president of the senate and the speaker of the house of representatives shall jointly appoint the members of the work group to include the following:

(a) One member representing the senate;

(b) One member representing the house of representatives;

(c) The chief of the Washington state patrol or the chief's designee;

(d) One member representing the criminal justice training commission with expertise in developing law enforcement training curricula;

(e) The executive director of the Washington association of sheriffs and police chiefs or the executive director's designee;

(f) Two members representing the Washington association of prosecuting attorneys, each from a diverse geographical location;

(g) One member representing the Washington defender association;

(h) One member representing the Washington association of criminal defense lawyers;

(i) One member representing the Washington innocence project; and

(j) One member from the scientific community with expertise in eyewitness memory.

(3) The duties of the work group include, but are not limited to:

(a) Developing model guidelines for the collection of eyewitness evidence consistent with the model policies adopted in 2015 by the Washington association of sheriffs and police chiefs and the Washington association of prosecuting attorneys;

(b) Designing and implementing statewide law enforcement training for the collection and documentation of eyewitness evidence based on the model guidelines developed pursuant to this subsection; and

(c) Collecting local protocols required under section 3 of this act.

(4) The work group shall hold its initial meeting no later than July 31, 2019, and complete the model guidelines and training curriculum no later than November 30, 2019.

(5) The work group shall prepare and submit to the appropriate committees of the legislature a report including the model guidelines, training curriculum, and a summary of its work by November 30, 2019. Following the submission of the report, the work group must reconvene every three years to revise the model guidelines as needed in accordance with science-based best practices for the collection of eyewitness evidence.

(6) The work group shall function within existing resources.

NEW SECTION. Sec. 3. LOCAL PROTOCOLS FOR EYEWITNESS EVIDENCE. (1) No later than December 31, 2020, each law enforcement agency shall adopt and implement a written local protocol for the collection of eyewitness evidence consistent with the model guidelines developed pursuant to section 2 of this act, and

submit a copy of the local protocol to the work group established under section 2 of this act.

(2) If a law enforcement agency adopts the model guidelines, it has met the requirements of this section.

(3) If a law enforcement agency chooses to adopt its own local protocol, the protocol must:

(a) Be based on credible field, academic, or laboratory research on eyewitness memory;

(b) Be designed to reduce erroneous eyewitness identifications and enhance the reliability and objectivity of eyewitness identifications; and

(c) Include standards for: (i) Blind administration of the identification procedure; (ii) filler selection; (iii) instructions to the witness; and (iv) documenting a statement of witness confidence immediately following any positive identification.

NEW SECTION. Sec. 4. TRAINING ON EYEWITNESS EVIDENCE PROCEDURES. Beginning October 1, 2020, the criminal justice training commission shall make available specialized training based on the training curriculum developed pursuant to section 2 of this act to persons responsible for the collection of eyewitness identification evidence during criminal investigations. For the purposes of providing training based on the required curriculum, the commission shall consult with the University of Washington Tacoma and the work group under section 2 of this act. Training participants shall have the opportunity to practice skills and receive feedback from instructors.

NEW SECTION. Sec. 5. INFORMANT RELIABILITY WORK GROUP. (1) For the purposes of this section, "informant" means any person who: (a) Was previously unconnected with the criminal case as either a witness or a codefendant; (b) claims to have relevant information about the crime; (c) is currently charged with a crime or is facing potential criminal charges or is in custody; and (d) at any time receives consideration in exchange for providing the information or testimony.

(2) The Washington innocence project, through the University of Washington school of law, and in consultation with the Washington association of prosecuting attorneys, shall convene a work group on the reliability of informant testimony. The primary purposes of the work group are to adopt model guidelines and develop a training curriculum based on those guidelines to assist prosecuting attorneys in evaluating the reliability of information or testimony offered by an informant before it is used in connection with any criminal proceeding and in determining adequate preliminary disclosures to the defense.

(3) The president of the senate and the speaker of the house of representatives shall jointly appoint the members of the work group to include the following:

(a) One member representing the senate;

(b) One member representing the house of representatives;

(c) The executive director of the Washington association of sheriffs and police chiefs or the executive director's designee;

(d) Two members representing the Washington association of prosecuting attorneys, each from a diverse geographical location;

(e) One member representing the Washington defender association;

(f) One member representing the Washington association of criminal defense lawyers;

(g) One member representing the Washington innocence project; and

(h) One member of the board of the western states information network.

(4) The duties of the work group include, but are not limited to:

(a) Developing model guidelines to direct prosecutors in determining whether to use an informant in a criminal proceeding;

(b) Designing and implementing statewide training for prosecutors and defense counsel based on the model guidelines; and

(c) Collecting local protocols required under section 6 of this act.

(5) The work group shall hold its initial meeting no later than July 31, 2019, and complete the model guidelines and training curriculum no later than November 30, 2019.

(6) The work group shall coordinate with the Washington association of prosecuting attorneys, Washington defender association, and Washington association of criminal defense lawyers to make specialized training based on the training curriculum developed pursuant to subsection (4) of this section available to prosecuting attorneys and criminal defense attorneys.

(7) The work group shall prepare and submit to the appropriate committees of the legislature a report including the model guidelines, the training curriculum, and a summary of its work by November 30, 2019.

(8) The work group shall function within existing resources.

NEW SECTION. Sec. 6. LOCAL PROTOCOLS FOR THE USE OF INFORMANTS. (1) No later than December 31, 2020, each county prosecuting attorney shall:

(a) Adopt and implement a written local protocol for the use of informants consistent with the model guidelines developed pursuant to section 5 of this act, and submit a copy of the local protocol to the work group established in section 5 of this act; and

(b) Establish and maintain a central record of informants used in the course of criminal proceedings as well as formal offers to give testimony or other information. This record is the confidential work product of the office of the prosecuting attorney.

(2) If a county prosecutor adopts the model guidelines developed by the work group established under section 5 of this act, it has met the requirements of this section.

(3) If a county prosecutor chooses to adopt its own local protocol, the protocol must articulate adequate preliminary disclosures to the defense and include a list of procedures for prosecuting attorneys to follow when evaluating the reliability of an informant that includes:

(a) The complete criminal history of the informant including pending criminal charges;

(b) Any consideration provided in exchange for the information or testimony;

(c) Whether the informant's information or testimony was modified or recanted;

(d) The number of times the informant has previously provided information or testimony in exchange for consideration; and

(e) The kind and quality of other evidence corroborating the informant's information or testimony.

(4) Nothing in this section diminishes federal constitutional disclosure obligations to criminal defendants or any related obligations under Washington case law, statutes, or court rules.

(5) For the purposes of this section, "informant" has the same meaning as in section 5 of this act.

NEW SECTION. Sec. 7. JURY INSTRUCTION FOR INFORMANT TESTIMONY. (1) If the testimony of an informant is admitted in a criminal proceeding, the prosecuting attorney or defendant may request a jury instruction on exercising caution in evaluating the credibility of an informant. Except when otherwise determined by the court, the instruction should be substantially similar to the following form:

"The testimony of an informant, given on behalf of the [State] [City] [County] in exchange for a legal advantage or other benefit, should be subjected to careful examination in the light of other evidence in the case, and should be acted upon with great caution. You, the jury, must weigh the credibility of his or her testimony. You should not find the defendant guilty upon such testimony alone unless, after carefully considering the testimony, you are satisfied beyond a reasonable doubt of its truth."

(2) For the purposes of this section, "informant" has the same meaning as in section 5 of this act.

NEW SECTION. Sec. 8. Sections 1 through 7 of this act constitute a new chapter in Title 10 RCW."

Correct the title.

Signed by Representatives Goodman, Chair; Davis, Vice Chair; Klippert, Ranking Minority Member; Sutherland, Assistant Ranking Minority Member; Griffey; Lovick; Orwall; Pellicciotti and Pettigrew.

Referred to Committee on Appropriations.

April 8, 2019

ESSB 5741 Prime Sponsor, Committee on Health & Long Term Care: Making changes to support future operations of the state all payer claims database by transferring the responsibility to the health care authority, partnering with a lead organization with broad data experience, including with self-insured employers, and other changes to improve and ensure successful and sustainable database operations for access to and use of the data to improve health care, providing consumers useful and consistent quality and cost measures, and assess total cost of care in Washington state. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Appropriations and without amendment by Committee on Innovation, Technology & Economic Development.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 43.371.005 and 2014 c 223 s 9 are each amended to read as follows:

The legislature finds that:

(1) The activities authorized by this chapter will require collaboration among state agencies and local governments that ~~((purchase))~~ are involved in health care, private health carriers, third-party purchasers, health care providers, and hospitals. These activities will identify strategies to increase the quality and effectiveness of health care delivered in Washington state and are therefore in the best interest of the public.

(2) The benefits of collaboration, together with active state supervision, outweigh potential adverse impacts. Therefore, the legislature intends to exempt from state antitrust laws, and provide immunity through the state action doctrine from federal antitrust laws, activities that are undertaken, reviewed, and approved by the ~~((office))~~ authority pursuant to this chapter that might otherwise be constrained by such laws. The legislature does not intend and does not authorize any person or entity to engage in activities not provided for by this chapter, and the legislature neither exempts nor provides immunity for such activities including,

but not limited to, agreements among competing providers or carriers to set prices or specific levels of reimbursement for health care services.

Sec. 2. RCW 43.371.010 and 2015 c 246 s 1 are each reenacted and amended to read as follows:

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

(1) "Authority" means the health care authority.

(2) "Carrier" and "health carrier" have the same meaning as in RCW 48.43.005.

(3) "Claims data" means the data required by RCW 43.371.030 to be submitted to the database, including billed, allowed and paid amounts, and such additional information as defined by the director in rule.

(4) "Data supplier" means: (a) A carrier, third-party administrator, or a public program identified in RCW 43.371.030 that provides claims data; and (b) a carrier or any other entity that provides claims data to the database at the request of an employer-sponsored self-funded health plan or Taft-Hartley trust health plan pursuant to RCW 43.371.030(1).

(5) "Data vendor" means an entity contracted to perform data collection, processing, aggregation, extracts, analytics, and reporting.

(6) "Database" means the statewide all-payer health care claims database established in RCW 43.371.020.

(7) "Direct patient identifier" means a data variable that directly identifies an individual, including: Names; telephone numbers; fax numbers; social security number; medical record numbers; health plan beneficiary numbers; account numbers; certificate or license numbers; vehicle identifiers and serial numbers, including license plate numbers; device identifiers and serial numbers; web universal resource locators; internet protocol address numbers; biometric identifiers, including finger and voice prints; and full face photographic images and any comparable images.

(8) "Director" means the director of ~~((financial management))~~ the authority.

(9) "Indirect patient identifier" means a data variable that may identify an individual when combined with other information.

(10) "Lead organization" means the organization selected under RCW 43.371.020.

(11) "Office" means the office of financial management.

(12) "Proprietary financial information" means claims data or reports that disclose or would allow the determination of specific terms of contracts, discounts, or fixed reimbursement arrangements or other specific reimbursement arrangements between an individual health care facility or health care provider, as those terms are defined in RCW 48.43.005, and a specific payer, or internal

fee schedule or other internal pricing mechanism of integrated delivery systems owned by a carrier.

(13) "Unique identifier" means an obfuscated identifier assigned to an individual represented in the database to establish a basis for following the individual longitudinally throughout different payers and encounters in the data without revealing the individual's identity.

Sec. 3. RCW 43.371.020 and 2015 c 246 s 2 are each amended to read as follows:

(1) The office shall establish a statewide all-payer health care claims database ~~((the))~~. On January 1, 2020, the office must transfer authority and oversight for the database to the authority. The office and authority must develop a transition plan that sustains operations by July 1, 2019. The database shall support transparent public reporting of health care information. The database must improve transparency to: Assist patients, providers, and hospitals to make informed choices about care; enable providers, hospitals, and communities to improve by benchmarking their performance against that of others by focusing on best practices; enable purchasers to identify value, build expectations into their purchasing strategy, and reward improvements over time; and promote competition based on quality and cost. The database must systematically collect all medical claims and pharmacy claims from private and public payers, with data from all settings of care that permit the systematic analysis of health care delivery. Any mandated claims data collected in the all-payer health care claims database is owned by the state. Copies of the information may be retained by the lead organization.

(2) The ~~((office))~~ authority shall use a competitive procurement process, in accordance with chapter 39.26 RCW, to select a lead organization from among the best potential bidders to coordinate and manage the database.

(a)(i) In conducting the competitive procurement, the authority must ensure that no state officer or state employee participating in the procurement process:

(A) Has a current relationship or had a relationship within the last three years with any organization that bids on the procurement that would constitute a conflict with the proper discharge of official duties under chapter 42.52 RCW; or

(B) Is a compensated or uncompensated member of a bidding organization's board of directors, advisory committee, or has held such a position in the past three years.

(ii) If any relationship or interest described in (a)(i) of this subsection is discovered during the procurement process, the officer or employee with the prohibited relationship must withdraw from involvement in the procurement process.

(b) Due to the complexities of the all payer claims database and the unique privacy, quality, and financial objectives, the ((office)) authority must ((award extra points in the scoring evaluation for)) give strong consideration to the following elements in determining the appropriate lead organization contractor: (i) The ((bidder's)) organization's

degree of experience in health care data collection, analysis, analytics, and security; (ii) whether the ((bidder)) organization has a long-term self-sustainable financial model; (iii) the ((bidder's)) organization's experience in convening and effectively engaging stakeholders to develop reports, especially among groups of health providers, carriers, and self-insured purchasers; (iv) the ((bidder's)) organization's experience in meeting budget and timelines for report generations; and (v) the ((bidder's)) organization's ability to combine cost and quality data to assess total cost of care.

~~((b) By December 31, 2017,)) (c) The successful lead organization must apply to be certified as a qualified entity pursuant to 42 C.F.R. Sec. 401.703(a) by the centers for medicare and medicaid services.~~

(d) The authority may not select a lead organization that:

(i) Is a health plan as defined by and consistent with the definitions in RCW 48.43.005;

(ii) Is a hospital as defined in RCW 70.41.020;

(iii) Is a provider regulated under Title 18 RCW;

(iv) Is a third-party administrator as defined in RCW 70.290.010; or

(v) Is an entity with a controlling interest in any entity covered in (d)(i) through (iv) of this subsection.

(3) As part of the competitive procurement process referenced in subsection (2) of this section, the lead organization shall enter into a contract with a data vendor or multiple data vendors to perform data collection, processing, aggregation, extracts, and analytics. ~~((The))~~ A data vendor must:

(a) Establish a secure data submission process with data suppliers;

(b) Review data submitters' files according to standards established by the ~~((office))~~ authority;

(c) Assess each record's alignment with established format, frequency, and consistency criteria;

(d) Maintain responsibility for quality assurance, including, but not limited to: (i) The accuracy and validity of data suppliers' data; (ii) accuracy of dates of service spans; (iii) maintaining consistency of record layout and counts; and (iv) identifying duplicate records;

(e) Assign unique identifiers, as defined in RCW 43.371.010, to individuals represented in the database;

(f) Ensure that direct patient identifiers, indirect patient identifiers, and proprietary financial information are released only in compliance with the terms of this chapter;

(g) Demonstrate internal controls and affiliations with separate organizations as appropriate to ensure safe data collection, security of the data with state of the art encryption methods, actuarial support, and data review for accuracy and quality assurance;

(h) Store data on secure servers that are compliant with the federal health insurance portability and accountability act and regulations, with access to the data strictly controlled and limited to staff with appropriate training, clearance, and background checks; and

(i) Maintain state of the art security standards for transferring data to approved data requestors.

(4) The lead organization and data vendor must submit detailed descriptions to the office of the chief information officer to ensure robust security methods are in place. The office of the chief information officer must report its findings to the ~~((office))~~ authority and the appropriate committees of the legislature.

(5) The lead organization is responsible for internal governance, management, funding, and operations of the database. At the direction of the ~~((office))~~ authority, the lead organization shall work with the data vendor to:

(a) Collect claims data from data suppliers as provided in RCW 43.371.030;

(b) Design data collection mechanisms with consideration for the time and cost incurred by data suppliers and others in submission and collection and the benefits that measurement would achieve, ensuring the data submitted meet quality standards and are reviewed for quality assurance;

(c) Ensure protection of collected data and store and use any data in a manner that protects patient privacy and complies with this section. All patient-specific information must be deidentified with an up-to-date industry standard encryption algorithm;

(d) Consistent with the requirements of this chapter, make information from the database available as a resource for public and private entities, including carriers, employers, providers, hospitals, and purchasers of health care;

(e) Report performance on cost and quality pursuant to RCW 43.371.060 using, but not limited to, the performance measures developed under RCW 41.05.690;

(f) Develop protocols and policies, including prerelease peer review by data suppliers, to ensure the quality of data releases and reports;

(g) Develop a plan for the financial sustainability of the database as ~~((self-sustaining))~~ may be reasonable and customary as compared to other states' databases and charge fees for reports and data files as needed to fund the database. Any fees must be approved by the ~~((office))~~ authority and should be comparable, accounting for relevant differences across data requests and uses. The lead organization may not charge providers or data suppliers fees other than fees directly related to requested reports and data files; and

(h) Convene advisory committees with the approval and participation of the ~~((office))~~ authority, including: (i) A committee on data policy development; and (ii) a committee to establish a data release process consistent with the requirements of this chapter and to provide advice regarding formal data release requests. The advisory committees must include in-state representation from key provider, hospital,

public health, health maintenance organization, large and small private purchasers, consumer organizations, and the two largest carriers supplying claims data to the database.

(6) The lead organization governance structure and advisory committees for this database must include representation of the third-party administrator of the uniform medical plan. A payer, health maintenance organization, or third-party administrator must be a data supplier to the all-payer health care claims database to be represented on the lead organization governance structure or advisory committees.

Sec. 4. RCW 43.371.030 and 2015 c 246 s 3 are each amended to read as follows:

(1) The state medicaid program, public employees' benefits board programs, school employees' benefits board programs beginning July 1, 2020, all health carriers operating in this state, all third-party administrators paying claims on behalf of health plans in this state, and the state labor and industries program must submit claims data to the database within the time frames established by the director in rule and in accordance with procedures established by the lead organization. The director may expand this requirement by rule to include any health plans or health benefit plans defined in RCW 48.43.005(26) (a) through (i) to accomplish the goals of this chapter set forth in RCW 43.371.020(1). Employer-sponsored self-funded health plans and Taft-Hartley trust health plans may voluntarily provide claims data to the database within the time frames and in accordance with procedures established by the lead organization.

(2) Any data supplier used by an entity that voluntarily participates in the database must provide claims data to the data vendor upon request of the entity.

(3) The lead organization shall submit an annual status report to the ~~((office))~~ authority regarding compliance with this section.

(4) The state retains the ownership over all mandated claims data submitted to the database under this section. No contract with the lead organization may transfer ownership of data from the state to the lead organization or the data vendor. Copies of the information may be retained by the lead organization.

Sec. 5. RCW 43.371.050 and 2015 c 246 s 5 are each amended to read as follows:

(1) Except as otherwise required by law, claims or other data from the database shall only be available for retrieval in processed form to public and private requestors pursuant to this section and shall be made available within a reasonable time after the request. Each request for claims data must include, at a minimum, the following information:

(a) The identity of any entities that will analyze the data in connection with the request;

(b) The stated purpose of the request and an explanation of how the request supports the goals of this chapter set forth in RCW 43.371.020(1);

(c) A description of the proposed methodology;

(d) The specific variables requested and an explanation of how the data is necessary to achieve the stated purpose described pursuant to (b) of this subsection;

(e) How the requester will ensure all requested data is handled in accordance with the privacy and confidentiality protections required under this chapter and any other applicable law;

(f) The method by which the data will be ~~((stored,))~~ destroyed ~~((, or returned to the lead organization))~~ at the conclusion of the data use agreement;

(g) The protections that will be utilized to keep the data from being used for any purposes not authorized by the requester's approved application; and

(h) Consent to the penalties associated with the inappropriate disclosures or uses of direct patient identifiers, indirect patient identifiers, or proprietary financial information adopted under RCW 43.371.070(1).

(2) The lead organization may decline a request that does not include the information set forth in subsection (1) of this section that does not meet the criteria established by the lead organization's data release advisory committee, or for reasons established by rule.

(3) Except as otherwise required by law, the ~~((office))~~ authority shall direct the lead organization and the data vendor to maintain the confidentiality of claims or other data it collects for the database that include proprietary financial information, direct patient identifiers, indirect patient identifiers, or any combination thereof. Any entity that receives claims or other data must also maintain confidentiality and may only release such claims data or any part of the claims data if:

(a) The claims data does not contain proprietary financial information, direct patient identifiers, indirect patient identifiers, or any combination thereof; and

(b) The release is described and approved as part of the request in subsection (1) of this section.

(4) The lead organization shall, in conjunction with the ~~((office))~~ authority and the data vendor, create and implement a process to govern levels of access to and use of data from the database consistent with the following:

(a) Claims or other data that include proprietary financial information, direct patient identifiers, indirect patient identifiers, unique identifiers, or any combination thereof may be released only to the extent such information is necessary to achieve the goals of this chapter set forth in RCW 43.371.020(1) to researchers with approval of an institutional review board upon receipt of a signed data use and confidentiality agreement with the lead organization. A researcher or research organization that obtains claims data pursuant to this subsection must agree in writing not to disclose such data or parts of the data set to any other party, including affiliated entities, and must consent to the penalties associated with the inappropriate disclosures or uses of direct patient identifiers, indirect patient identifiers,

or proprietary financial information adopted under RCW 43.371.070(1).

(b) Claims or other data that do not contain direct patient identifiers, but that may contain proprietary financial information, indirect patient identifiers, unique identifiers, or any combination thereof may be released to:

(i) Federal, state, tribal, and local government agencies upon receipt of a signed data use agreement with the ~~((office))~~ authority and the lead organization. Federal, state, tribal, and local government agencies that obtain claims data pursuant to this subsection are prohibited from using such data in the purchase or procurement of health benefits for their employees; ~~((and))~~

(ii) Any entity when functioning as the lead organization under the terms of this chapter; and

(iii) The Washington health benefit exchange established under chapter 43.71 RCW, upon receipt of a signed data use agreement with the authority and the lead organization as directed by rules adopted under this chapter.

(c) Claims or other data that do not contain proprietary financial information, direct patient identifiers, or any combination thereof, but that may contain indirect patient identifiers, unique identifiers, or a combination thereof may be released to agencies, researchers, and other entities as approved by the lead organization upon receipt of a signed data use agreement with the lead organization.

(d) Claims or other data that do not contain direct patient identifiers, indirect patient identifiers, proprietary financial information, or any combination thereof may be released upon request.

(5) Reports utilizing data obtained under this section may not contain proprietary financial information, direct patient identifiers, indirect patient identifiers, or any combination thereof. Nothing in this subsection (5) may be construed to prohibit the use of geographic areas with a sufficient population size or aggregate gender, age, medical condition, or other characteristics in the generation of reports, so long as they cannot lead to the identification of an individual.

(6) Reports issued by the lead organization at the request of providers, facilities, employers, health plans, and other entities as approved by the lead organization may utilize proprietary financial information to calculate aggregate cost data for display in such reports. The ~~((office))~~ authority shall approve by rule a format for the calculation and display of aggregate cost data consistent with this chapter that will prevent the disclosure or determination of proprietary financial information. In developing the rule, the ~~((office))~~ authority shall solicit feedback from the stakeholders, including those listed in RCW 43.371.020(5)(h), and must consider, at a minimum, data presented as proportions, ranges, averages, and medians, as well as the differences in types of data gathered and submitted by data suppliers.

(7) Recipients of claims or other data under subsection (4) of this section must agree in a data use agreement or a confidentiality agreement to, at a minimum:

(a) Take steps to protect data containing direct patient identifiers, indirect patient identifiers, proprietary financial information, or any combination thereof as described in the agreement;

(b) Not redisclose the claims data except pursuant to subsection (3) of this section;

(c) Not attempt to determine the identity of any person whose information is included in the data set or use the claims or other data in any manner that identifies any individual or their family or attempt to locate information associated with a specific individual;

(d) Destroy (~~or return~~) claims data (~~to the lead organization~~) at the conclusion of the data use agreement; and

(e) Consent to the penalties associated with the inappropriate disclosures or uses of direct patient identifiers, indirect patient identifiers, or proprietary financial information adopted under RCW 43.371.070(1).

Sec. 6. RCW 43.371.060 and 2015 c 246 s 6 are each amended to read as follows:

(1)(a) Under the supervision of and through contract with the ~~((office))~~ authority, the lead organization shall prepare health care data reports using the database and the statewide health performance and quality measure set. Prior to the lead organization releasing any health care data reports that use claims data, the lead organization must submit the reports to the ~~((office))~~ authority for review.

(b) By October 31st of each year, the lead organization shall submit to the director a list of reports it anticipates producing during the following calendar year. The director may establish a public comment period not to exceed thirty days, and shall submit the list and any comment to the appropriate committees of the legislature for review.

(2)(a) Health care data reports that use claims data prepared by the lead organization for the legislature and the public should promote awareness and transparency in the health care market by reporting on:

(i) Whether providers and health systems deliver efficient, high quality care; and

(ii) Geographic and other variations in medical care and costs as demonstrated by data available to the lead organization.

(b) Measures in the health care data reports should be stratified by demography, income, language, health status, and geography when feasible with available data to identify disparities in care and successful efforts to reduce disparities.

(c) Comparisons of costs among providers and health care systems must account for differences in the case mix and severity of illness of patients and populations, as appropriate and feasible, and must take into consideration the cost impact of subsidization for uninsured and

government-sponsored patients, as well as teaching expenses, when feasible with available data.

(3) The lead organization may not publish any data or health care data reports that:

(a) Directly or indirectly identify individual patients;

(b) Disclose a carrier's proprietary financial information; ~~((or))~~

(c) Compare performance in a report generated for the general public that includes any provider in a practice with fewer than four providers; or

(d) Contain medicaid data that is in direct conflict with the biannual medicaid forecast.

(4) The lead organization may not release a report that compares and identifies providers, hospitals, or data suppliers unless:

(a) It allows the data supplier, the hospital, or the provider to verify the accuracy of the information submitted to the data vendor, comment on the reasonableness of conclusions reached, and submit to the lead organization and data vendor any corrections of errors with supporting evidence and comments within thirty days of receipt of the report;

(b) It corrects data found to be in error within a reasonable amount of time; and

(c) The report otherwise complies with this chapter.

(5) The ~~((office))~~ authority and the lead organization may use claims data to identify and make available information on payers, providers, and facilities, but may not use claims data to recommend or incentivize direct contracting between providers and employers.

(6)(a) The lead organization shall distinguish in advance to the ~~((office))~~ authority when it is operating in its capacity as the lead organization and when it is operating in its capacity as a private entity. Where the lead organization acts in its capacity as a private entity, it may only access data pursuant to RCW 43.371.050(4) (b), (c), or (d).

(b) Except as provided in RCW 43.371.050(4), claims or other data that contain direct patient identifiers or proprietary financial information must remain exclusively in the custody of the data vendor and may not be accessed by the lead organization.

Sec. 7. RCW 43.371.070 and 2015 c 246 s 7 are each amended to read as follows:

(1) The director shall adopt any rules necessary to implement this chapter, including:

(a) Definitions of claim and data files that data suppliers must submit to the database, including: Files for covered medical services, pharmacy claims, and dental claims; member eligibility and enrollment data; and provider data with necessary identifiers;

(b) Deadlines for submission of claim files;

(c) Penalties for failure to submit claim files as required;

(d) Procedures for ensuring that all data received from data suppliers are securely collected and stored in compliance with state and federal law;

(e) Procedures for ensuring compliance with state and federal privacy laws;

(f) Procedures for establishing appropriate fees;

(g) Procedures for data release; ~~(and)~~

(h) Penalties associated with the inappropriate disclosures or uses of direct patient identifiers, indirect patient identifiers, and proprietary financial information; and

(i) A minimum reporting threshold below which a data supplier is not required to submit data.

(2) The director may not adopt rules, policies, or procedures beyond the authority granted in this chapter.

Sec. 8. RCW 43.371.080 and 2015 c 246 s 8 are each amended to read as follows:

~~(1) ((By December 1st of 2016 and 2017, the office shall report to the appropriate committees of the legislature regarding the development and implementation of the database, including but not limited to budget and cost detail, technical progress, and work plan metrics.~~

~~(2) Every two years commencing two years following the year in which the first report is issued or the first release of data is provided from the database, the office))~~ The authority shall report every two years to the appropriate committees of the legislature regarding the cost, performance, and effectiveness of the database and the performance of the lead organization under its contract with the ~~((office))~~ authority. Using independent economic expertise, subject to appropriation, the report must evaluate whether the database has advanced the goals set forth in RCW 43.371.020(1), as well as the performance of the lead organization. The report must also make recommendations regarding but not limited to how the database can be improved, whether the contract for the lead organization should be modified, renewed, or terminated, and the impact the database has had on competition between and among providers, purchasers, and payers.

~~(((3) Beginning July 1, 2015, and every six months thereafter, the office))~~ (2) The authority shall annually report to the appropriate committees of the legislature regarding any additional grants received or extended.

NEW SECTION. Sec. 9. A new section is added to chapter 43.371 RCW to read as follows:

(1) To ensure the database is meeting the needs of state agencies and other data users, the authority shall convene a state agency coordinating structure, consisting of state agencies with related data needs and the Washington health benefit exchange to ensure effectiveness of the database and the agencies' programs. The coordinating

structure must collaborate in a private/public manner with the lead organization and other partners key to the broader success of the database. The coordinating structure shall advise the authority and lead organization on the development of any database policies and rules relevant to agency data needs.

(2) The office must participate as a key part of the coordinating structure and evaluate progress towards meeting the goals of the database, and, as necessary, recommend strategies for maintaining and promoting the progress of the database in meeting the intent of this section, and report its findings biennially to the governor and the legislature. The authority shall facilitate the office obtaining the information needed to complete the report in a manner that is efficient and not overly burdensome for the parties. The authority must provide the office with access to database processes, procedures, nonproprietary methodologies, and outcomes to conduct the review and issue the biennial report. The biennial review shall assess, at a minimum the following:

(a) The list of approved agency use case projects and related data requirements under RCW 43.371.050(4);

(b) Successful and unsuccessful data requests and outcomes related to agency and nonagency health researchers pursuant to RCW 43.371.050(4);

(c) On-line data portal access and effectiveness related to research requests and data provider review and reconsideration;

(d) Adequacy of data security and policy consistent with the policy of the office of the chief information officer; and

(e) Timeliness, adequacy, and responsiveness of the database with regard to requests made under RCW 43.371.050(4) and for potential improvements in data sharing, data processing, and communication.

(3) To promote the goal of improving health outcomes through better cost and quality information, the authority, in consultation with the agency coordinating structure, the office, lead organization, and data vendor shall make recommendations to the Washington state performance measurement coordinating committee as necessary to improve the effectiveness of the state common measure set as adopted under RCW 70.320.030.

NEW SECTION. Sec. 10. The lead organization and the authority shall provide any persons or entities that have a signed data use agreement with the lead organization in effect on June 1, 2019, with the option to extend the data use agreement through June 30, 2020. Any person or entity that chooses to extend its data use agreement through June 30, 2020, may not be charged any fees in excess of the fees in the data use agreement in effect on June 1, 2019.

NEW SECTION. Sec. 11. (1) The powers, duties, and functions of the office of financial management provided in chapter 43.371 RCW, except as otherwise

specified in this act, are transferred to the health care authority.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material necessary for the health care authority to carry out the powers, duties, and functions in chapter 43.371 RCW being transferred from the office of financial management to the health care authority and that are in the possession of the office of financial management must be delivered to the custody of the health care authority. All funds or credits of the office of financial management that are solely for the purposes of fulfilling the powers, duties, and functions in chapter 43.371 RCW shall be assigned to the health care authority.

(b) Any specific appropriations made to the office of financial management for the sole purpose of fulfilling the duties, powers, and functions in chapter 43.371 RCW must, on the effective date of this section, be transferred and credited to the health care authority.

(c) If any question arises as to the transfer of any funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management must make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All rules and pending business before the office of financial management specifically related to its powers, duties, and functions in chapter 43.371 RCW that are being transferred to the health care authority shall be continued and acted upon by the health care authority. All existing contracts and obligations remain in full force and must be performed by the health care authority.

(4) The transfer of the powers, duties, and functions of the office of financial management does not affect the validity of any act performed before the effective date of this section.

(5) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these must make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

NEW SECTION. Sec. 12. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2019, in the omnibus appropriations act, this act is null and void.

NEW SECTION. Sec. 13. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

Correct the title.

Signed by Representatives Ormsby, Chair; Stokesbary, Ranking Minority Member; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; MacEwen, Assistant Ranking Minority Member; Caldier; Cody; Dolan; Dye; Fitzgibbon; Hansen; Hoff; Hudgins; Jinkins; Macri; Mosbrucker; Pettigrew; Pollet; Ryu; Senn; Springer; Stanford; Steele; Sullivan; Sutherland; Tarleton; Tharinger and Ybarra.

MINORITY recommendation: Do not pass. Signed by Representatives Rude, Assistant Ranking Minority Member; Chandler; Kraft and Schmick.

Referred to Committee on Appropriations.

March 27, 2019

ESSB 5746 Prime Sponsor, Committee on Housing Stability & Affordability: Providing for adequate provisions for low-income homeownership opportunities. Reported by Committee on Housing, Community Development & Veterans

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. (1) The legislature finds that communities need to provide a continuum of affordable housing to people and that the continuum of housing includes emergency shelters for the homeless, supportive housing for people with special needs, rental housing assistance, and helping families buy their first home.

(2) The legislature also finds that:

(a) A recent Harvard University study reported that even after the tremendous decline in housing prices and the rising wave of foreclosures that began in 2007, homeownership continues to be a significant source of household wealth and remains particularly important for low-income and minority households. The desire to own a home is not solely or even primarily motivated by financial goals, but homeownership's appeal lies strongly in associations with having control over one's living situation, the desire to put down roots in a community, and the sense of efficacy and success that is associated with owning. Homeowning is strongly preferred for a host of other reasons by most individuals as they age, and provides further support for policies to promote homeownership out of equity concerns to help individuals and families achieve this important goal. The social benefits of homeownership lend further credence to the value of supports for homeownership.

(b) Policies to support low-income homeownership are a means to alleviate wealth disparities and provide homeowners with a hedge against inflation in rents over time, thereby potentially preventing low-income homeowners from becoming homeless and allow low-income households to build equity that continues to account

for a substantial share of net wealth, as losses in nonhousing wealth were also significant in the wake of the great recession.

(c) Housing is both a physical and psychological anchor that is essential to the stability of our personal and communal lives. However, for too many, housing is a source of stress due to its cost and uncertainty, whether as a renter or owner, and inadequate and substandard housing is a primary contributor to the higher incidences of mental and physical health problems and related public costs found among children and adults living in poverty.

(d) Stable affordable housing has ancillary benefits in individual and family mental and physical health, and in education achievement.

(e) Homeownership is a critical component to an effective continuum of housing that impacts the success of neighborhoods as places of opportunity for positive life outcomes for residents, especially neighborhoods with families with children.

(f) Appropriations for low-income homeownership projects have not been adequately provided between 2013 and 2018, with only 4.26 percent of housing trust fund dollars being invested in such projects.

Sec. 2. RCW 43.185.050 and 2018 c 223 s 4 are each amended to read as follows:

(1) The department must use moneys from the housing trust fund and other legislative appropriations to finance in whole or in part any loans or grant projects that will provide affordable housing for ((persons and families with special housing needs and with incomes at or below fifty percent of the median family income for the county or standard metropolitan statistical area where the project is located)) low-income households as defined in RCW 43.185A.010. At least thirty percent of these moneys used in any given funding cycle must be for the benefit of projects located in rural areas of the state as defined by the department. If the department determines that it has not received an adequate number of suitable applications for rural projects during any given funding cycle, the department may allocate unused moneys for projects in nonrural areas of the state.

(2) Activities eligible for assistance from the housing trust fund and other legislative appropriations include, but are not limited to:

(a) New construction, rehabilitation, or acquisition of low and very low-income housing units;

(b) Rent subsidies;

(c) Matching funds for social services directly related to providing housing for special-need tenants in assisted projects;

(d) Technical assistance, design and finance services and consultation, and administrative costs for eligible nonprofit community or neighborhood-based organizations;

(e) Administrative costs for housing assistance groups or organizations when such grant or loan will substantially increase the recipient's access to housing funds other than those available under this chapter;

(f) Shelters and related services for the homeless, including emergency shelters and overnight youth shelters;

(g) Mortgage subsidies, including temporary rental and mortgage payment subsidies to prevent homelessness;

(h) Mortgage insurance guarantee or payments for eligible projects;

(i) Down payment or closing cost assistance for eligible first-time home buyers as defined in RCW 43.185A.010;

(j) Acquisition of housing units for the purpose of preservation as low-income or very low-income housing;

(k) Projects making housing more accessible to families with members who have disabilities; and

(l) Remodeling and improvements as required to meet building code, licensing requirements, or legal operations to residential properties owned and operated by an entity eligible under RCW 43.185A.040, which were transferred as described in RCW 82.45.010(3)(t) by the parent of a child with developmental disabilities.

(3) Preference must be given for projects that include an early learning facility.

(4) Legislative appropriations from capital bond proceeds may be used only for the costs of projects authorized under subsection (2)(a), (i), and (j) of this section, and not for the administrative costs of the department.

(5) Moneys from repayment of loans from appropriations from capital bond proceeds may be used for all activities necessary for the proper functioning of the housing assistance program except for activities authorized under subsection (2)(b) and (c) of this section.

(6) Administrative costs associated with application, distribution, and project development activities of the department may not exceed three percent of the annual funds available for the housing assistance program. Reappropriations must not be included in the calculation of the annual funds available for determining the administrative costs.

(7) Administrative costs associated with compliance and monitoring activities of the department may not exceed one-quarter of one percent annually of the contracted amount of state investment in the housing assistance program.

Sec. 3. RCW 43.185.070 and 2015 c 155 s 2 are each amended to read as follows:

(1) During each calendar year in which funds from the housing trust fund or other legislative appropriations are available for use by the department for the housing assistance program, the department must announce to all known interested parties, and through major media throughout the state, a grant and loan application period of

at least ninety days' duration. This announcement must be made as often as the director deems appropriate for proper utilization of resources. The department must then promptly grant as many applications as will utilize available funds less appropriate administrative costs of the department as provided in RCW 43.185.050.

(2) In awarding funds under this chapter, the department must:

(a) Provide for a geographic distribution on a statewide basis; and

(b) Until June 30, 2013, consider the total cost and per-unit cost of each project for which an application is submitted for funding under RCW 43.185.050(2) (a) and (j), as compared to similar housing projects constructed or renovated within the same geographic area.

(3) The department, with advice and input from the affordable housing advisory board established in RCW 43.185B.020, or a subcommittee of the affordable housing advisory board, must report recommendations for awarding funds in a cost-effective manner. The report must include an implementation plan, timeline, and any other items the department identifies as important to consider to the legislature by December 1, 2012.

(4) The department must give first priority to applications for projects and activities which utilize existing privately owned housing stock including privately owned housing stock purchased by nonprofit public development authorities and public housing authorities as created in chapter 35.82 RCW. As used in this subsection, privately owned housing stock includes housing that is acquired by a federal agency through a default on the mortgage by the private owner. Such projects and activities must be evaluated under subsection ~~((5))~~ (6) of this section. Second priority must be given to activities and projects which utilize existing publicly owned housing stock. All projects and activities must be evaluated by some or all of the criteria under subsection ~~((5))~~ (6) of this section, and similar projects and activities shall be evaluated under the same criteria.

(5) The department must use a separate application form for applications to provide homeownership opportunities and evaluate homeownership project applications as allowed under chapter 43.185A RCW.

(6) The department must give preference for applications based on some or all of the criteria under this subsection, and similar projects and activities must be evaluated under the same criteria:

(a) The degree of leveraging of other funds that will occur;

(b) The degree of commitment from programs to provide necessary habilitation and support services for projects focusing on special needs populations;

(c) Recipient contributions to total project costs, including allied contributions from other sources such as professional, craft and trade services, and lender interest rate subsidies;

(d) Local government project contributions in the form of infrastructure improvements, and others;

(e) Projects that encourage ownership, management, and other project-related responsibility opportunities;

(f) Projects that demonstrate a strong probability of serving the original target group or income level for a period of at least twenty-five years;

(g) The applicant has the demonstrated ability, stability and resources to implement the project;

(h) Projects which demonstrate serving the greatest need;

(i) Projects that provide housing for persons and families with the lowest incomes;

(j) Projects serving special needs populations which are under statutory mandate to develop community housing;

(k) Project location and access to employment centers in the region or area;

(l) Projects that provide employment and training opportunities for disadvantaged youth under a youthbuild or youthbuild-type program as defined in RCW 50.72.020;

(m) Project location and access to available public transportation services; and

(n) Projects involving collaborative partnerships between local school districts and either public housing authorities or nonprofit housing providers, that help children of low-income families succeed in school. To receive this preference, the local school district must provide an opportunity for community members to offer input on the proposed project at the first scheduled school board meeting following submission of the grant application to the department.

~~((6))~~ (7) The department may only approve applications for projects for persons with mental illness that are consistent with a behavioral health organization six-year capital and operating plan.

Sec. 4. RCW 43.185A.010 and 2013 c 145 s 4 are each amended to read as follows:

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

(1) "Affordable housing" means residential housing for rental occupancy which, as long as the same is occupied by low-income households, requires payment of monthly housing costs, including utilities other than telephone, of no more than thirty percent of the family's income. The department must adopt policies for residential homeownership housing, occupied by low-income households, which specify the percentage of family income that may be spent on monthly housing costs, including utilities other than telephone, to qualify as affordable housing.

(2) "Contracted amount" has the same meaning as provided in RCW 43.185.020.

(3) "Department" means the department of commerce.

(4) "Director" means the director of the department of commerce.

(5) "First-time home buyer" means an individual who meets any of the following criteria:

(a) An individual or ((his or her)) the individual's spouse ((or domestic partner)) who ((have not owned a home)) has had no ownership in a principal residence during the three-year period ((prior to purchase of a home)) ending on the date of purchase of the property;

(b) A single parent who has only owned a home with a former spouse while married;

(c) An individual who is a displaced homemaker as defined in 24 C.F.R. Sec. 93.2 as it exists on the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, and has only owned a home with a spouse;

(d) An individual who has only owned a principal residence not permanently affixed to a permanent foundation in accordance with applicable regulations; or

(e) An individual who has only owned a property that is discerned by a licensed building inspector as being uninhabitable.

(6) "Low-income household" means a single person, family or unrelated persons living together whose adjusted income is less than eighty percent of the median family income, adjusted for household size, for the county where the project is located.

NEW SECTION. Sec. 5. A new section is added to chapter 43.185A RCW to read as follows:

Beginning December 1, 2021, and every year thereafter, the department must report on its web site the following for every previous funding cycle: The number of homeownership and multifamily projects funded by housing trust fund moneys; the percentage of housing trust fund investments made to homeownership and multifamily projects; and the total number of households being served at up to eighty percent of the area median income, up to fifty percent of the area median income, and up to thirty percent of the area median income, for both homeownership and multifamily projects."

Correct the title.

Signed by Representatives Jenkin, Ranking Minority Member; Gildon, Assistant Ranking Minority Member; Ryu, Chair; Morgan, Vice Chair; Barkis; Entenman; Frame; Leavitt and Reeves.

Referred to Committee on Capital Budget.

March 26, 2019

ESB 5755

Prime Sponsor, Senator Randall:
Concerning veteran and national guard tuition waivers. Reported by Committee on College & Workforce Development

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 28B.15.621 and 2018 c 129 s 1 are each amended to read as follows:

(1) The legislature finds that active military and naval veterans, reserve military and naval veterans, and national guard members called to active duty have served their country and have risked their lives to defend the lives of all Americans and the freedoms that define and distinguish our nation. The legislature intends to honor active military and naval veterans, reserve military and naval veterans, and national guard members who have served on active military or naval duty for the public service they have provided to this country.

(2) Subject to the limitations in RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community and technical colleges, may waive all or a portion of tuition and fees for an eligible veteran or national guard member.

(3) The governing boards of the state universities, the regional universities, The Evergreen State College, and the community and technical colleges, may waive all or a portion of tuition and fees for a military or naval veteran who is a Washington domiciliary, but who did not serve on foreign soil or in international waters or in another location in support of those serving on foreign soil or in international waters and who does not qualify as an eligible veteran or national guard member under subsection (8) of this section. However, there shall be no state general fund support for waivers granted under this subsection.

(4) Subject to the conditions in subsection (5) of this section and the limitations in RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community and technical colleges, shall waive all tuition and fees for the following persons:

(a) A child and the spouse or the domestic partner or surviving spouse or surviving domestic partner of an eligible veteran or national guard member who became totally disabled as a result of serving in active federal military or naval service, or who is determined by the federal government to be a prisoner of war or missing in action; and

(b) A child and the surviving spouse or surviving domestic partner of an eligible veteran or national guard member who lost his or her life as a result of serving in active federal military or naval service.

(5) The conditions in this subsection (5) apply to waivers under subsection (4) of this section.

(a) A child must be a Washington domiciliary between the age of seventeen and twenty-six to be eligible for the tuition waiver. A child's marital status does not affect eligibility.

(b)(i) A surviving spouse or surviving domestic partner must be a Washington domiciliary.

(ii) Except as provided in (b)(iii) of this subsection, a surviving spouse or surviving domestic partner has ten years from the date of the death, total disability, or federal determination of prisoner of war or missing in action status of the eligible veteran or national guard member to receive benefits under the waiver. Upon remarriage or registration in a subsequent domestic partnership, the surviving spouse or surviving domestic partner is ineligible for the waiver of all tuition and fees.

(iii) If a death results from total disability, the surviving spouse has ten years from the date of death in which to receive benefits under the waiver.

(c) Each recipient's continued participation is subject to the school's satisfactory progress policy.

(d) Tuition waivers for graduate students are not required for those who qualify under subsection (4) of this section but are encouraged.

(e) Recipients who receive a waiver under subsection (4) of this section may attend full-time or part-time. Total credits earned using the waiver may not exceed two hundred fifty quarter credits, or the equivalent of semester credits.

(f) Subject to amounts appropriated, recipients who receive a waiver under subsection (4) of this section shall also receive a stipend for textbooks and course materials in the amount of five hundred dollars per academic year, to be divided equally among academic terms and prorated for part-time enrollment.

(6) Required waivers of all tuition and fees under subsection (4) of this section shall not affect permissive waivers of tuition and fees under subsection (3) of this section.

(7) Private vocational schools and private higher education institutions are encouraged to provide waivers consistent with the terms in subsections (2) through (5) of this section.

(8) The definitions in this subsection apply throughout this section.

(a) "Child" means a biological child, adopted child, or stepchild.

(b) "Eligible veteran or national guard member" means a Washington domiciliary who was an active or reserve member of the United States military or naval forces, or a national guard member called to active duty, who served in active federal service, under either Title 10 or Title 32 of the United States Code, in a war or conflict fought on foreign soil or in international waters or in support of those serving on foreign soil or in international waters, and if discharged from service, has received an honorable discharge or any

other discharge if the sole reason for discharge is due to gender or sexuality.

(c) "Totally disabled" means a person who has been determined to be one hundred percent disabled by the federal department of veterans affairs.

(d) "Washington domiciliary" means a person whose true, fixed, and permanent house and place of habitation is the state of Washington. "Washington domiciliary" includes a person who is residing in rental housing or residing in base housing. In ascertaining whether a child or surviving spouse or surviving domestic partner is domiciled in the state of Washington, public institutions of higher education shall, to the fullest extent possible, rely upon the standards provided in RCW 28B.15.013.

(9) As used in subsection (4) of this section, "fees" includes all assessments for costs incurred as a condition to a student's full participation in coursework and related activities at an institution of higher education.

(10) The governing boards of the state universities, the regional universities, The Evergreen State College, and the community and technical colleges shall report to the higher education committees of the legislature by November 15, 2010, and every two years thereafter, regarding the status of implementation of the waivers under subsection (4) of this section. The reports shall include the following data and information:

(a) Total number of waivers;

(b) Total amount of tuition waived;

(c) Total amount of fees waived;

(d) Average amount of tuition and fees waived per recipient;

(e) Recipient demographic data that is disaggregated by distinct ethnic categories within racial subgroups; and

(f) Recipient income level, to the extent possible."

Correct the title.

Signed by Representatives Hansen, Chair; Entenman, Vice Chair; Leavitt, Vice Chair; Van Werven, Ranking Minority Member; Gildon, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Bergquist; Kraft; Mead; Paul; Pollet; Ramos; Rude; Sells; Slatter and Sutherland.

Referred to Committee on Appropriations.

March 27, 2019

SB 5764

Prime Sponsor, Senator Randall: Changing the name of the medical quality assurance commission to the Washington medical commission. Reported by Committee on Health Care & Wellness

MAJORITY recommendation: Do pass. Signed by Representatives Cody, Chair; Macri, Vice Chair;

Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Chambers; Davis; DeBolt; Harris; Jinkins; Riccelli; Robinson; Stonier; Thai and Tharinger.

March 27, 2019

SB 5817 Prime Sponsor, Senator Rivers: Concerning senior students in accredited schools of chiropractic. Reported by Committee on Health Care & Wellness

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 18.25.190 and 2000 c 171 s 8 are each amended to read as follows:

Nothing in this chapter shall be construed to prohibit:

(1) The temporary practice in this state of chiropractic by any chiropractor licensed by another state, territory, or country in which he or she resides. However, the chiropractor shall not establish a practice open to the general public and shall not engage in temporary practice under this section for a period longer than thirty days. The chiropractor shall register his or her intention to engage in the temporary practice of chiropractic in this state with the commission before engaging in the practice of chiropractic, and shall agree to be bound by such conditions as may be prescribed by rule by the commission.

(2) The practice of chiropractic(~~(, except the administration of a chiropractic adjustment,))~~ by a person who is a regular senior student in an accredited school of chiropractic approved by the commission if the practice is part of a regular course of instruction offered by the school and the student is under the direct supervision and control of a chiropractor duly licensed pursuant to this chapter and approved by the commission. A senior student practicing chiropractic under this subsection must pass an open book written jurisprudence examination approved by the commission prior to administering a chiropractic adjustment. The commission may adopt rules requiring the student and his or her supervising licensed chiropractor to file information with the commission regarding the practice of chiropractic under this subsection, including the name and contact information of the student, the name and contact information of the supervising licensed chiropractor, and the location where the student will be practicing.

(3) The practice of chiropractic by a person serving a period of postgraduate chiropractic training in a program of clinical chiropractic training sponsored by a school of chiropractic accredited in this state if the practice is part of his or her duties as a clinical postgraduate trainee and the trainee is under the direct supervision and control of a chiropractor duly licensed pursuant to this chapter and approved by the commission.

(4) The practice of chiropractic by a person who is eligible and has applied to take the next available examination for licensing offered by the commission, except that the unlicensed chiropractor must provide all services under the direct control and supervision of a licensed chiropractor approved by the commission. The unlicensed chiropractor may continue to practice as provided by this subsection until the results of the next available examination are published, but in no case for a period longer than six months. The commission shall adopt rules necessary to effectuate the intent of this subsection.

Any provision of chiropractic services by any individual under subsection (1), (2), (3), or (4) of this section shall be subject to the jurisdiction of the commission as provided in chapter 18.130 RCW."

Correct the title.

Signed by Representatives Cody, Chair; Macri, Vice Chair; Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Chambers; Davis; DeBolt; Harris; Jinkins; Riccelli; Robinson; Stonier; Thai and Tharinger.

March 27, 2019

2SSB 5846 Prime Sponsor, Committee on Ways & Means: Concerning the integration of international medical graduates into Washington's health care delivery system. Reported by Committee on Health Care & Wellness

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"**NEW SECTION. Sec. 1.** (1) The legislature finds that a shortage of primary care health care providers has created significant provider access issues in Washington.

(2) The legislature further finds that international medical graduates residing in the state could provide increased access to primary care for state residents, but international medical graduates routinely face barriers to practice.

(3) Therefore, the legislature intends to establish the international medical graduate work group to study barriers to practice and make recommendations on how the state can implement an international medical graduate assistance program by January 1, 2022, to assist international medical graduates in integrating into the Washington health care delivery system.

NEW SECTION. Sec. 2. (1) Subject to the availability of amounts appropriated for this specific purpose, the international medical graduate work group is

established. The work group membership must consist of the following members appointed by the governor:

- (a) A representative from the medical quality assurance commission;
 - (b) A representative from the department of health, health systems quality assurance division;
 - (c) A representative from the University of Washington school of medicine graduate medical education program;
 - (d) A representative from the Washington State University Elson S. Floyd college of medicine graduate medical education program;
 - (e) A representative from the Pacific Northwest University of Health Sciences college of osteopathic medicine graduate medical education program;
 - (f) A representative from a statewide association representing physicians;
 - (g) A representative from the Washington state family medicine residency network;
 - (h) A representative from a primary care health care employer in a rural or underserved area of Washington;
 - (i) A representative from a health carrier offering coverage in a rural or underserved area of Washington;
 - (j) A licensed physician with experience working with international medical graduates;
 - (k) A representative from an organization specializing in refugee advocacy in Washington;
 - (l) A representative from an organization serving refugee physicians and international medical graduates;
 - (m) A representative from an organization offering counseling and educational programs to internationally trained health professionals;
 - (n) A representative from an organization representing community and migrant health centers; and
 - (o) At least two international medical graduates.
- (2) The work group must:
- (a) Develop strategies and recommendations for reducing barriers for international medical graduates obtaining residency positions in Washington, including preresidency training;
 - (b) Make recommendations for the appropriate number of residency positions to be designated for international medical graduates, and the locations and specialties of those positions; and
 - (c) Make recommendations on the postresidency service requirements for international medical graduates who graduate from a designated residency position.
- (3) Staff support for the work group must be provided by the medical quality assurance commission.

(4) The work group must submit a report to the governor and the legislature with its recommendations by December 1, 2019.

(5) This section expires June 30, 2020."

Correct the title.

Signed by Representatives Cody, Chair; Macri, Vice Chair; Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Chambers; Davis; DeBolt; Harris; Jinkins; Riccelli; Robinson; Stonier; Thai and Tharinger.

Referred to Committee on Rules for second reading.

March 28, 2019

SSB 5885 Prime Sponsor, Committee on Law & Justice: Creating an exemption to hearsay for child sex trafficking victims. Reported by Committee on Civil Rights & Judiciary

MAJORITY recommendation: Do pass. Signed by Representatives Jinkins, Chair; Thai, Vice Chair; Irwin, Ranking Minority Member; Goodman; Hansen; Kilduff; Kirby; Klippert; Orwall; Shea; Valdez and Walen.

Referred to Committee on Rules for second reading.

March 27, 2019

SSB 5889 Prime Sponsor, Committee on Health & Long Term Care: Concerning insurance communications confidentiality. Reported by Committee on Health Care & Wellness

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The legislature finds and declares:

(1) All people deserve the right to choose the health services that are right for them, and the right to confidential access to those health services.

(2) When people are assured of the ability to confidentially access health care services, they are more likely to seek health services, disclose health risk behaviors to a clinician, and return for follow-up care.

(3) When denied confidential access to needed care, people may delay or forgo care, leading to higher rates of unprotected sex, unintended pregnancy, untreated sexually transmitted infections, and mental health issues, or they may turn to public health safety net funds or free clinics to receive confidential care—important resources that should be reserved for people who do not have insurance coverage.

Sec. 2. RCW 48.43.005 and 2016 c 65 s 2 are each amended to read as follows:

Unless otherwise specifically provided, the definitions in this section apply throughout this chapter.

(1) "Adjusted community rate" means the rating method used to establish the premium for health plans adjusted to reflect actuarially demonstrated differences in utilization or cost attributable to geographic region, age, family size, and use of wellness activities.

(2) "Adverse benefit determination" means a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for a benefit, including a denial, reduction, termination, or failure to provide or make payment that is based on a determination of an enrollee's or applicant's eligibility to participate in a plan, and including, with respect to group health plans, a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for a benefit resulting from the application of any utilization review, as well as a failure to cover an item or service for which benefits are otherwise provided because it is determined to be experimental or investigational or not medically necessary or appropriate.

(3) "Applicant" means a person who applies for enrollment in an individual health plan as the subscriber or an enrollee, or the dependent or spouse of a subscriber or enrollee.

(4) "Basic health plan" means the plan described under chapter 70.47 RCW, as revised from time to time.

(5) "Basic health plan model plan" means a health plan as required in RCW 70.47.060(2)(e).

(6) "Basic health plan services" means that schedule of covered health services, including the description of how those benefits are to be administered, that are required to be delivered to an enrollee under the basic health plan, as revised from time to time.

(7) "Board" means the governing board of the Washington health benefit exchange established in chapter 43.71 RCW.

(8)(a) For grandfathered health benefit plans issued before January 1, 2014, and renewed thereafter, "catastrophic health plan" means:

(i) In the case of a contract, agreement, or policy covering a single enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, one thousand seven hundred fifty dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least three thousand five hundred dollars, both amounts to be adjusted annually by the insurance commissioner; and

(ii) In the case of a contract, agreement, or policy covering more than one enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, three thousand five hundred dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least six thousand

dollars, both amounts to be adjusted annually by the insurance commissioner.

(b) In July 2008, and in each July thereafter, the insurance commissioner shall adjust the minimum deductible and out-of-pocket expense required for a plan to qualify as a catastrophic plan to reflect the percentage change in the consumer price index for medical care for a preceding twelve months, as determined by the United States department of labor. For a plan year beginning in 2014, the out-of-pocket limits must be adjusted as specified in section 1302(c)(1) of P.L. 111-148 of 2010, as amended. The adjusted amount shall apply on the following January 1st.

(c) For health benefit plans issued on or after January 1, 2014, "catastrophic health plan" means:

(i) A health benefit plan that meets the definition of catastrophic plan set forth in section 1302(e) of P.L. 111-148 of 2010, as amended; or

(ii) A health benefit plan offered outside the exchange marketplace that requires a calendar year deductible or out-of-pocket expenses under the plan, other than for premiums, for covered benefits, that meets or exceeds the commissioner's annual adjustment under (b) of this subsection.

(9) "Certification" means a determination by a review organization that an admission, extension of stay, or other health care service or procedure has been reviewed and, based on the information provided, meets the clinical requirements for medical necessity, appropriateness, level of care, or effectiveness under the auspices of the applicable health benefit plan.

(10) "Concurrent review" means utilization review conducted during a patient's hospital stay or course of treatment.

(11) "Covered person" or "enrollee" means a person covered by a health plan including an enrollee, subscriber, policyholder, beneficiary of a group plan, or individual covered by any other health plan.

(12) "Dependent" means, at a minimum, the enrollee's legal spouse and dependent children who qualify for coverage under the enrollee's health benefit plan.

(13) "Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in a condition (a) placing the health of the individual, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy, (b) serious impairment to bodily functions, or (c) serious dysfunction of any bodily organ or part.

(14) "Emergency services" means a medical screening examination, as required under section 1867 of the social security act (42 U.S.C. 1395dd), that is within the capability of the emergency department of a hospital, including ancillary services routinely available to the

emergency department to evaluate that emergency medical condition, and further medical examination and treatment, to the extent they are within the capabilities of the staff and facilities available at the hospital, as are required under section 1867 of the social security act (42 U.S.C. 1395dd) to stabilize the patient. Stabilize, with respect to an emergency medical condition, has the meaning given in section 1867(e)(3) of the social security act (42 U.S.C. 1395dd(e)(3)).

(15) "Employee" has the same meaning given to the term, as of January 1, 2008, under section 3(6) of the federal employee retirement income security act of 1974.

(16) "Enrollee point-of-service cost-sharing" means amounts paid to health carriers directly providing services, health care providers, or health care facilities by enrollees and may include copayments, coinsurance, or deductibles.

(17) "Exchange" means the Washington health benefit exchange established under chapter 43.71 RCW.

(18) "Final external review decision" means a determination by an independent review organization at the conclusion of an external review.

(19) "Final internal adverse benefit determination" means an adverse benefit determination that has been upheld by a health plan or carrier at the completion of the internal appeals process, or an adverse benefit determination with respect to which the internal appeals process has been exhausted under the exhaustion rules described in RCW 48.43.530 and 48.43.535.

(20) "Grandfathered health plan" means a group health plan or an individual health plan that under section 1251 of the patient protection and affordable care act, P.L. 111-148 (2010) and as amended by the health care and education reconciliation act, P.L. 111-152 (2010) is not subject to subtitles A or C of the act as amended.

(21) "Grievance" means a written complaint submitted by or on behalf of a covered person regarding service delivery issues other than denial of payment for medical services or nonprovision of medical services, including dissatisfaction with medical care, waiting time for medical services, provider or staff attitude or demeanor, or dissatisfaction with service provided by the health carrier.

(22) "Health care facility" or "facility" means hospices licensed under chapter 70.127 RCW, hospitals licensed under chapter 70.41 RCW, rural health care facilities as defined in RCW 70.175.020, psychiatric hospitals licensed under chapter 71.12 RCW, nursing homes licensed under chapter 18.51 RCW, community mental health centers licensed under chapter 71.05 or 71.24 RCW, kidney disease treatment centers licensed under chapter 70.41 RCW, ambulatory diagnostic, treatment, or surgical facilities licensed under chapter 70.41 RCW, drug and alcohol treatment facilities licensed under chapter 70.96A RCW, and home health agencies licensed under chapter 70.127 RCW, and includes such facilities if owned and operated by a political subdivision or instrumentality of the state and such other facilities as required by federal law and implementing regulations.

(23) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

(24) "Health care service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(25) "Health carrier" or "carrier" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, or a health maintenance organization as defined in RCW 48.46.020, and includes "issuers" as that term is used in the patient protection and affordable care act (P.L. 111-148).

(26) "Health plan" or "health benefit plan" means any policy, contract, or agreement offered by a health carrier to provide, arrange, reimburse, or pay for health care services except the following:

(a) Long-term care insurance governed by chapter 48.84 or 48.83 RCW;

(b) Medicare supplemental health insurance governed by chapter 48.66 RCW;

(c) Coverage supplemental to the coverage provided under chapter 55, Title 10, United States Code;

(d) Limited health care services offered by limited health care service contractors in accordance with RCW 48.44.035;

(e) Disability income;

(f) Coverage incidental to a property/casualty liability insurance policy such as automobile personal injury protection coverage and homeowner guest medical;

(g) Workers' compensation coverage;

(h) Accident only coverage;

(i) Specified disease or illness-triggered fixed payment insurance, hospital confinement fixed payment insurance, or other fixed payment insurance offered as an independent, noncoordinated benefit;

(j) Employer-sponsored self-funded health plans;

(k) Dental only and vision only coverage;

(l) Plans deemed by the insurance commissioner to have a short-term limited purpose or duration, or to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular full-time undergraduate or graduate student at an accredited higher education institution, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner; and

(m) Civilian health and medical program for the veterans affairs administration (CHAMPVA).

(27) "Individual market" means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

(28) "Material modification" means a change in the actuarial value of the health plan as modified of more than five percent but less than fifteen percent.

(29) "Open enrollment" means a period of time as defined in rule to be held at the same time each year, during which applicants may enroll in a carrier's individual health benefit plan without being subject to health screening or otherwise required to provide evidence of insurability as a condition for enrollment.

(30) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

(31) "Premium" means all sums charged, received, or deposited by a health carrier as consideration for a health plan or the continuance of a health plan. Any assessment or any "membership," "policy," "contract," "service," or similar fee or charge made by a health carrier in consideration for a health plan is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point-of-service cost-sharing.

(32) "Review organization" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, health care service contractor as defined in RCW 48.44.010, or health maintenance organization as defined in RCW 48.46.020, and entities affiliated with, under contract with, or acting on behalf of a health carrier to perform a utilization review.

(33) "Small employer" or "small group" means any person, firm, corporation, partnership, association, political subdivision, sole proprietor, or self-employed individual that is actively engaged in business that employed an average of at least one but no more than fifty employees, during the previous calendar year and employed at least one employee on the first day of the plan year, is not formed primarily for purposes of buying health insurance, and in which a bona fide employer-employee relationship exists. In determining the number of employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of taxation by this state, shall be considered an employer. Subsequent to the issuance of a health plan to a small employer and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, a small employer shall continue to be considered a small employer until the plan anniversary following the date the small employer no longer meets the requirements of this definition. A self-employed individual or sole proprietor who is covered as a group of one must also: (a) Have been employed by the same small employer or small group for at least twelve months prior to application for small group coverage, and (b) verify that he or she derived at least seventy-five percent of his or her income from a trade or business through which the individual or sole proprietor has

attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form 1040, schedule C or F, for the previous taxable year, except a self-employed individual or sole proprietor in an agricultural trade or business, must have derived at least fifty-one percent of his or her income from the trade or business through which the individual or sole proprietor has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form 1040, for the previous taxable year.

(34) "Special enrollment" means a defined period of time of not less than thirty-one days, triggered by a specific qualifying event experienced by the applicant, during which applicants may enroll in the carrier's individual health benefit plan without being subject to health screening or otherwise required to provide evidence of insurability as a condition for enrollment.

(35) "Standard health questionnaire" means the standard health questionnaire designated under chapter 48.41 RCW.

(36) "Utilization review" means the prospective, concurrent, or retrospective assessment of the necessity and appropriateness of the allocation of health care resources and services of a provider or facility, given or proposed to be given to an enrollee or group of enrollees.

(37) "Wellness activity" means an explicit program of an activity consistent with department of health guidelines, such as, smoking cessation, injury and accident prevention, reduction of alcohol misuse, appropriate weight reduction, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education for the purpose of improving enrollee health status and reducing health service costs.

(38)(a) "Protected individual" means:

(i) An adult covered as a dependent on the enrollee's health benefit plan, including an individual enrolled on the health benefit plan of the individual's registered domestic partner; or

(ii) A minor who may obtain health care without the consent of a parent or legal guardian, pursuant to state or federal law.

(b) "Protected individual" does not include an individual deemed not competent to provide informed consent for care under RCW 11.88.010(1)(e).

(39) "Sensitive health care services" means health services related to reproductive health, sexually transmitted diseases, substance use disorder, gender dysphoria, gender affirming care, domestic violence, and mental health.

Sec. 3. RCW 48.43.505 and 2000 c 5 s 5 are each amended to read as follows:

(1) Health carriers and insurers shall adopt policies and procedures that conform administrative, business, and operational practices to protect an enrollee's and protected

individual's right to privacy or right to confidential health care services granted under state or federal laws.

(2) A health carrier may not require protected individuals to obtain the policyholder, primary subscriber, or other covered person's authorization to receive health care services or to submit a claim if the protected individual has the right to consent to care.

(3) A health carrier must recognize the right of a protected individual or enrollee to exclusively exercise rights granted under this section regarding health information related to care that the enrollee or protected individual has received.

(4) A health carrier or insurer must direct all communication regarding a protected individual's receipt of sensitive health care services directly to the protected individual receiving care, or to a physical or email address or telephone number specified by the protected individual. A carrier or insurer may not disclose nonpublic personal health information concerning sensitive health care services provided to a protected individual to any person, including the policyholder, the primary subscriber, or any plan enrollees other than the protected individual receiving care, without the express written consent or verbal authorization on a recorded telephone line of the protected individual receiving care. Communications subject to this limitation include the following written, verbal, or electronic communications:

(a) Bills and attempts to collect payment;

(b) A notice of adverse benefits determinations;

(c) An explanations of benefits notice;

(d) A carrier's request for additional information regarding a claim;

(e) A notice of a contested claim;

(f) The name and address of a provider, a description of services provided, and other visit information; and

(g) Any written, oral, or electronic communication from a carrier that contains protected health information.

(5) Protected individuals may request that health carrier communications regarding the receipt of sensitive health care services be sent to another individual, including the policyholder, primary subscriber, or a health care provider, for the purposes of appealing adverse benefits determinations.

(6) Health carriers shall:

(a) Limit disclosure of any information, including personal health information, about a protected individual who is the subject of the information and shall direct communications containing such information directly to the protected individual, or to a physical or email address or telephone number specified by the protected individual, if he or she requests such a limitation, regardless of whether the information pertains to sensitive services;

(b) Permit protected individuals to use the form described in section 4(2) of this act and must also allow

enrollees and protected individuals to make the request by telephone, email, or the internet;

(c) Ensure that requests for nondisclosure remain in effect until the protected individual revokes or modifies the request in writing;

(d) Limit disclosure of information under this subsection consistent with the protected individual's request; and

(e) Ensure that requests for nondisclosure are implemented no later than three business days after receipt of a request.

(7) Health carriers may not require a protected individual to waive any right to limit disclosure under this section as a condition of eligibility for or coverage under a health benefit plan.

(8) For the protection of patient confidentiality, any communication from a health carrier relating to the provision of health care services, if the communications disclose protected health information, including medical information or provider name and address, relating to receipt of sensitive services, must be provided in the form and format requested by the individual patient receiving care.

(9) A policyholder or primary subscriber may not be required by a health carrier or insurer to pay for charges for health care services if the policyholder or primary subscriber has not authorized the receipt of health care services for a protected individual who has instructed the health carrier or insurer to direct communications about the protected individual's receipt of health care services to a physical or email address other than that of the policyholder or primary subscriber.

(10) The commissioner may adopt rules to implement this section after considering relevant standards adopted by national managed care accreditation organizations and the national association of insurance commissioners, and after considering the effect of those standards on the ability of carriers to undertake enrollee care management and disease management programs.

NEW SECTION. Sec. 4. A new section is added to chapter 48.43 RCW to read as follows:

(1) The commissioner shall:

(a) Develop a process for the regular collection of information from carriers on requests for confidential communications pursuant to RCW 48.43.505 for the purposes of monitoring compliance, including monitoring:

(i) The effectiveness of the process described in RCW 48.43.505 in allowing protected individuals to redirect insurance communications, the extent to which protected individuals are using the process, and whether the process is working properly; and

(ii) The education and outreach activities conducted by carriers to inform enrollees about their right to confidential communications.

(b) Establish a process for ensuring compliance; and

(c) Develop rules necessary to implement this act.

(2) The commissioner shall work with stakeholders to develop and make available to the public a standardized form that a protected individual may submit to a carrier to make a confidential communications request. At minimum, this form must:

(a) Inform a protected individual about the protected individual's right to confidential communications;

(b) Allow a protected individual to indicate where to redirect communications, including a specified physical or email address or specified telephone number; and

(c) Include a disclaimer that it may take up to three business days from the date of receipt for a carrier to process the form.

Sec. 5. RCW 48.43.510 and 2012 c 211 s 26 are each amended to read as follows:

(1) A carrier that offers a health plan may not offer to sell a health plan to an enrollee or to any group representative, agent, employer, or enrollee representative without first offering to provide, and providing upon request, the following information before purchase or selection:

(a) A listing of covered benefits, including prescription drug benefits, if any, a copy of the current formulary, if any is used, definitions of terms such as generic versus brand name, and policies regarding coverage of drugs, such as how they become approved or taken off the formulary, and how consumers may be involved in decisions about benefits;

(b) A listing of exclusions, reductions, and limitations to covered benefits, and any definition of medical necessity or other coverage criteria upon which they may be based;

(c) A statement of the carrier's policies for protecting the confidentiality of health information;

(d) A statement of the cost of premiums and any enrollee cost-sharing requirements;

(e) A summary explanation of the carrier's review of adverse benefit determinations and grievance processes;

(f) A statement regarding the availability of a point-of-service option, if any, and how the option operates; and

(g) A convenient means of obtaining lists of participating primary care and specialty care providers, including disclosure of network arrangements that restrict access to providers within any plan network. The offer to provide the information referenced in this subsection (1) must be clearly and prominently displayed on any information provided to any prospective enrollee or to any prospective group representative, agent, employer, or enrollee representative.

(2) Upon the request of any person, including a current enrollee, prospective enrollee, or the insurance

commissioner, a carrier must provide written information regarding any health care plan it offers, that includes the following written information:

(a) Any documents, instruments, or other information referred to in the medical coverage agreement;

(b) A full description of the procedures to be followed by an enrollee for consulting a provider other than the primary care provider and whether the enrollee's primary care provider, the carrier's medical director, or another entity must authorize the referral;

(c) Procedures, if any, that an enrollee must first follow for obtaining prior authorization for health care services;

(d) A written description of any reimbursement or payment arrangements, including, but not limited to, capitation provisions, fee-for-service provisions, and health care delivery efficiency provisions, between a carrier and a provider or network;

(e) Descriptions and justifications for provider compensation programs, including any incentives or penalties that are intended to encourage providers to withhold services or minimize or avoid referrals to specialists;

(f) An annual accounting of all payments made by the carrier which have been counted against any payment limitations, visit limitations, or other overall limitations on a person's coverage under a plan; however, the individual requesting an annual accounting may only receive information about that individual's own care, and may not receive information pertaining to protected individuals who have requested confidential communications pursuant to RCW 48.43.505;

(g) A copy of the carrier's review of adverse benefit determinations grievance process for claim or service denial and its grievance process for dissatisfaction with care; and

(h) Accreditation status with one or more national managed care accreditation organizations, and whether the carrier tracks its health care effectiveness performance using the health employer data information set (HEDIS), whether it publicly reports its HEDIS data, and how interested persons can access its HEDIS data.

(3) Each carrier shall provide to all enrollees and prospective enrollees a list of available disclosure items.

(4) Nothing in this section requires a carrier or a health care provider to divulge proprietary information to an enrollee, including the specific contractual terms and conditions between a carrier and a provider.

(5) No carrier may advertise or market any health plan to the public as a plan that covers services that help prevent illness or promote the health of enrollees unless it:

(a) Provides all clinical preventive health services provided by the basic health plan, authorized by chapter 70.47 RCW;

(b) Monitors and reports annually to enrollees on standardized measures of health care and satisfaction of all

enrollees in the health plan. The state department of health shall recommend appropriate standardized measures for this purpose, after consideration of national standardized measurement systems adopted by national managed care accreditation organizations and state agencies that purchase managed health care services; and

(c) Makes available upon request to enrollees its integrated plan to identify and manage the most prevalent diseases within its enrolled population, including cancer, heart disease, and stroke.

(6) No carrier may preclude or discourage its providers from informing an enrollee of the care he or she requires, including various treatment options, and whether in the providers' view such care is consistent with the plan's health coverage criteria, or otherwise covered by the enrollee's medical coverage agreement with the carrier. No carrier may prohibit, discourage, or penalize a provider otherwise practicing in compliance with the law from advocating on behalf of an enrollee with a carrier. Nothing in this section shall be construed to authorize a provider to bind a carrier to pay for any service.

(7) No carrier may preclude or discourage enrollees or those paying for their coverage from discussing the comparative merits of different carriers with their providers. This prohibition specifically includes prohibiting or limiting providers participating in those discussions even if critical of a carrier.

(8) Each carrier must communicate enrollee information required in chapter 5, Laws of 2000 by means that ensure that a substantial portion of the enrollee population can make use of the information. Carriers may implement alternative, efficient methods of communication to ensure enrollees have access to information including, but not limited to, web site alerts, postcard mailings, and electronic communication in lieu of printed materials.

(9) The commissioner may adopt rules to implement this section. In developing rules to implement this section, the commissioner shall consider relevant standards adopted by national managed care accreditation organizations and state agencies that purchase managed health care services, as well as opportunities to reduce administrative costs included in health plans.

Sec. 6. RCW 48.43.530 and 2012 c 211 s 20 are each amended to read as follows:

(1) Each carrier and health plan must have fully operational, comprehensive grievance and appeal processes, and for plans that are not grandfathered, fully operational, comprehensive, and effective grievance and review of adverse benefit determination processes that comply with the requirements of this section and any rules adopted by the commissioner to implement this section. For the purposes of this section, the commissioner must consider applicable grievance and appeal or review of adverse benefit determination process standards adopted by national managed care accreditation organizations and state agencies that purchase managed health care services, and for health plans that are not grandfathered health plans as approved by

the United States department of health and human services or the United States department of labor. In the case of coverage offered in connection with a group health plan, if either the carrier or the health plan complies with the requirements of this section and RCW 48.43.535, then the obligation to comply is satisfied for both the carrier and the plan with respect to the health insurance coverage.

(2) Each carrier and health plan must process as a grievance an enrollee's expression of dissatisfaction about customer service or the quality or availability of a health service. Each carrier must implement procedures for registering and responding to oral and written grievances in a timely and thorough manner.

(3) Each carrier and health plan must provide written notice to an enrollee or the enrollee's designated representative, and the enrollee's provider, of its decision to deny, modify, reduce, or terminate payment, coverage, authorization, or provision of health care services or benefits, including the admission to or continued stay in a health care facility. Such notice must be sent directly to a protected individual receiving care when accessing sensitive health care services or when a protected individual has requested confidential communication pursuant to RCW 48.43.505(5).

(4) An enrollee's written or oral request that a carrier reconsider its decision to deny, modify, reduce, or terminate payment, coverage, authorization, or provision of health care services or benefits, including the admission to, or continued stay in, a health care facility must be processed as follows:

(a) When the request is made under a grandfathered health plan, the plan and the carrier must process it as an appeal;

(b) When the request is made under a health plan that is not grandfathered, the plan and the carrier must process it as a review of an adverse benefit determination; and

(c) Neither a carrier nor a health plan, whether grandfathered or not, may require that an enrollee file a complaint or grievance prior to seeking appeal of a decision or review of an adverse benefit determination under this subsection.

(5) To process an appeal, each plan that is not grandfathered and each carrier offering that plan must:

(a) Provide written notice to the enrollee when the appeal is received;

(b) Assist the enrollee with the appeal process;

(c) Make its decision regarding the appeal within thirty days of the date the appeal is received. An appeal must be expedited if the enrollee's provider or the carrier's medical director reasonably determines that following the appeal process response timelines could seriously jeopardize the enrollee's life, health, or ability to regain maximum function. The decision regarding an expedited appeal must be made within seventy-two hours of the date the appeal is received;

(d) Cooperate with a representative authorized in writing by the enrollee;

(e) Consider information submitted by the enrollee;

(f) Investigate and resolve the appeal; and

(g) Provide written notice of its resolution of the appeal to the enrollee and, with the permission of the enrollee, to the enrollee's providers. The written notice must explain the carrier's and health plan's decision and the supporting coverage or clinical reasons and the enrollee's right to request independent review of the carrier's decision under RCW 48.43.535.

(6) Written notice required by subsection (3) of this section must explain:

(a) The carrier's and health plan's decision and the supporting coverage or clinical reasons; and

(b) The carrier's and grandfathered plan's appeal or for plans that are not grandfathered, adverse benefit determination review process, including information, as appropriate, about how to exercise the enrollee's rights to obtain a second opinion, and how to continue receiving services as provided in this section.

(7) When an enrollee requests that the carrier or health plan reconsider its decision to modify, reduce, or terminate an otherwise covered health service that an enrollee is receiving through the health plan and the carrier's or health plan's decision is based upon a finding that the health service, or level of health service, is no longer medically necessary or appropriate, the carrier and health plan must continue to provide that health service until the appeal, or for health plans that are not grandfathered, the review of an adverse benefit determination, is resolved. If the resolution of the appeal, review of an adverse benefit determination, or any review sought by the enrollee under RCW 48.43.535 affirms the carrier's or health plan's decision, the enrollee may be responsible for the cost of this continued health service.

(8) Each carrier and health plan must provide a clear explanation of the grievance and appeal, or for plans that are not grandfathered, the process for review of an adverse benefit determination process upon request, upon enrollment to new enrollees, and annually to enrollees and subcontractors.

(9) Each carrier and health plan must ensure that each grievance, appeal, and for plans that are not grandfathered, grievance and review of adverse benefit determinations, process is accessible to enrollees who are limited English speakers, who have literacy problems, or who have physical or mental disabilities that impede their ability to file a grievance, appeal or review of an adverse benefit determination.

(10)(a) Each plan that is not grandfathered and the carrier that offers it must: Track each appeal until final resolution; maintain, and make accessible to the commissioner for a period of three years, a log of all appeals; and identify and evaluate trends in appeals.

(b) Each grandfathered plan and the carrier that offers it must: Track each review of an adverse benefit determination until final resolution; maintain and make

accessible to the commissioner, for a period of six years, a log of all such determinations; and identify and evaluate trends in requests for and resolution of review of adverse benefit determinations.

(11) In complying with this section, plans that are not grandfathered and the carriers offering them must treat a rescission of coverage, whether or not the rescission has an adverse effect on any particular benefit at that time, and any decision to deny coverage in an initial eligibility determination as an adverse benefit determination.

NEW SECTION. **Sec. 7.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 8.** This act takes effect January 1, 2020."

Correct the title.

Signed by Representatives Cody, Chair; Macri, Vice Chair; Caldier, Assistant Ranking Minority Member; Davis; Harris; Jinkins; Riccelli; Robinson; Stonier; Thai and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representative Schmick, Ranking Minority Member.

MINORITY recommendation: Without recommendation. Signed by Representatives Chambers and DeBolt.

March 27, 2019

SB 5923 Prime Sponsor, Senator Hobbs: Establishing an emergency loan program to be administered by the county road administration board. Reported by Committee on Transportation

MAJORITY recommendation: Do pass. Signed by Representatives Fey, Chair; Barkis, Ranking Minority Member; Wylie, 1st Vice Chair; Slatter, 2nd Vice Chair; Valdez, 2nd Vice Chair; Walsh, Assistant Ranking Minority Member; Young, Assistant Ranking Minority Member; Boehnke; Chambers; Chapman; Dent; Doglio; Dufault; Entenman; Eslick; Goehner; Gregerson; Irwin; Kloba; Lovick; McCaslin; Mead; Orcutt; Ortiz-Self; Paul; Pellicciotti; Ramos; Riccelli; Shea; Shewmake and Van Werven.

Referred to Committee on Rules for second reading.

March 26, 2019

SSB 5936 Prime Sponsor, Committee on Ways & Means: Concerning use of industrial waste through industrial symbioses. Reported by Committee on Environment & Energy

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 43.31.545 and 1991 c 319 s 210 are each amended to read as follows:

(1) The department is the lead state agency to assist in establishing and improving markets for recyclable materials generated in the state.

(2) For purposes of this section:

(a) "Industrial waste" has the meaning as defined in RCW 82.34.010.

(b) "Materials" means any waste product that may be used in another process.

(c) "Waste heat" means any heat or energy that may be used in another process.

(d) "Wastewater" has the same meaning as defined in RCW 90.46.010.

(3)(a) By June 30, 2020, the department shall produce a proposal and recommendations for setting up an industrial symbiosis coordination and innovation program and deliver the proposal to relevant committees of the legislature. The department shall work with relevant industry stakeholders to assist in development of the proposal and must convene at least two meetings with industry stakeholders prior to producing the proposal.

(b) The proposal in this section must include:

(i) A strategy to develop inventories of industrial waste and wastewater innovation currently in operation;

(ii) Recommendations regarding data collection for material flows to generate potential industry waste and wastewater matches and opportunities;

(iii) Guidance and best practices for emerging local industrial resource innovation parks; and

(iv) Recommendations regarding performance metrics to track results of industrial resource innovation parks that measure the economic and environmental outcomes.

(4) Subject to the availability of amounts appropriated for this specific purpose, the department may:

(a) Make loans or grants for the development, demonstration, and deployment of projects that encourage and enhance projects to create a cooperative use of wastewater, waste heat, and materials and resource sharing among more than one industry, company, or facility, including utilization of industrial waste and recycled materials, waste heat, wastewater, byproducts, and renewable energy, to generate economic value and achieve positive environmental outcomes;

(b) Develop a method and criteria for the allocation of loans and grants and a provision for technical assistance through an industrial resource innovation accelerator.

(5) The department shall identify estimates of costs and benefits associated with the proposal and recommendations described in subsection (3) of this section.

(6) The department shall identify the sources of scientific, economic, or other technical information it relied on developing the proposal and recommendations described in subsection (3) of this section, including peer-reviewed science."

Correct the title.

Signed by Representatives Fitzgibbon, Chair; Lekanoff, Vice Chair; Shea, Ranking Minority Member; Dye, Assistant Ranking Minority Member; Boehnke; Doglio; Fey; Mead; Peterson and Shewmake.

Referred to Committee on Appropriations.

March 27, 2019

SJM 8008 Prime Sponsor, Senator Bailey: Urging federal legislation to prohibit the sale of tobacco and vapor products to anyone under the age of twenty-one. Reported by Committee on Health Care & Wellness

MAJORITY recommendation: Do pass as amended.

On page 1, line 8, after "sale" insert "and use"

On page 1, line 13, after "sale" insert "and use"

On page 1, after line 14, insert the following:

"WHEREAS, Current Washington law may not prohibit the sales of tobacco and vapor products online, which may result in underage individuals being able to buy these products online;

WHEREAS, The prevent all cigarette trafficking (PACT) act of 2009 requires identification checks of online sales of tobacco by the delivery system, and 21 U.S.C. Sec. 387f prohibits the sale tobacco products to any person younger than eighteen years old;

WHEREAS, Without amendment to 15 U.S.C. Secs. 375 through 378 and to 21 U.S.C. Sec. 387f(d)(3)(a)(ii), the minimum age for sale and use of tobacco and vapor products would remain at eighteen years old;"

On page 1, line 17, after "sale" insert "and use"

On page 1, line 19, after "of" strike "Senate Bill No. 5057" and insert "Engrossed House Bill No. 1074"

Signed by Representatives Cody, Chair; Macri, Vice Chair; Davis; DeBolt; Harris; Jinkins; Riccelli; Robinson; Stonier; Thai and Tharinger.

MINORITY recommendation: Without recommendation. Signed by Representative Chambers.

MINORITY recommendation: Do not pass. Signed by Representatives Schmick, Ranking Minority Member Calder, Assistant Ranking Minority Member.

Referred to Committee on Rules for second reading.

There being no objection, the bills and memorials listed on the day's committee reports under the fifth order of business were referred to the committees so designated with the exception of ENGROSSED SUBSTITUTE SENATE BILL NO. 5311 which was referred to the Committee on Appropriations and SENATE BILL NO. 5490, SENATE BILL NO. 5764, SENATE BILL NO. 5817 and SUBSTITUTE SENATE BILL NO. 5889 which were placed on the second reading calendar.

There being no objection, the House advanced to the sixth order of business.

SECOND READING

SUBSTITUTE SENATE BILL NO. 5627, by Senate Committee on Labor & Commerce (originally sponsored by Brown and Keiser)

Establishing the healthy energy workers board. Revised for 1st Substitute: Creating the healthy energy work group to develop the healthy energy workers board.

The bill was read the second time.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives Mosbrucker and Sells spoke in favor of the passage of the bill.

MOTIONS

On motion of Representative Griffey, Representatives DeBolt, Maycumber and Vick were excused.

On motion of Representative Riccelli, Representative Peterson was excused.

The Speaker (Representative Orwall presiding) stated the question before the House to be the final passage of Substitute Senate Bill No. 5627.

ROLL CALL

The Clerk called the roll on the final passage of Substitute Senate Bill No. 5627, and the bill passed the House by the following vote: Yeas, 92; Nays, 2; Absent, 0; Excused, 4.

Voting yea: Representatives Appleton, Barkis, Bergquist, Blake, Boehnke, Calder, Callan, Chambers,

Chapman, Chopp, Cody, Davis, Dent, Doglio, Dolan, Dufault, Dye, Entenman, Eslick, Fey, Fitzgibbon, Frame, Gildon, Goehner, Goodman, Graham, Gregerson, Griffey, Hansen, Harris, Hoff, Hudgins, Irwin, Jenkin, Jinkins, Kilduff, Kirby, Klippert, Kloba, Kraft, Kretz, Leavitt, Lekanoff, Lovick, MacEwen, Macri, McCaslin, Mead, Morgan, Morris, Mosbrucker, Orcutt, Ormsby, Ortiz-Self, Orwall, Paul, Pellicciotti, Pettigrew, Pollet, Ramos, Reeves, Riccelli, Robinson, Rude, Ryu, Santos, Schmick, Sells, Senn, Shea, Shewmake, Slatter, Smith, Springer, Stanford, Steele, Stokesbary, Stonier, Sullivan, Sutherland, Tarleton, Thai, Tharinger, Valdez, Van Werven, Volz, Walen, Walsh, Wilcox, Wylie, Ybarra and Young.

Voting nay: Representatives Chandler and Corry.

Excused: Representatives DeBolt, Maycumber, Peterson and Vick.

SUBSTITUTE SENATE BILL NO. 5627, having received the necessary constitutional majority, was declared passed.

There being no objection, the House advanced to the seventh order of business.

THIRD READING

MESSAGE FROM THE SENATE

March 28, 2019

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 1870 with the following amendment:

Strike everything after the enacting clause and insert the following:

"PART I

DEFINITIONS

Sec. 1. RCW 48.43.005 and 2016 c 65 s 2 are each amended to read as follows:

Unless otherwise specifically provided, the definitions in this section apply throughout this chapter.

(1) "Adjusted community rate" means the rating method used to establish the premium for health plans adjusted to reflect actuarially demonstrated differences in utilization or cost attributable to geographic region, age, family size, and use of wellness activities.

(2) "Adverse benefit determination" means a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for a benefit, including a denial, reduction, termination, or failure to provide or make payment that is based on a determination of an enrollee's or applicant's eligibility to participate in a plan, and including, with respect to group health plans, a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for a benefit resulting from the application

of any utilization review, as well as a failure to cover an item or service for which benefits are otherwise provided because it is determined to be experimental or investigational or not medically necessary or appropriate.

(3) "Applicant" means a person who applies for enrollment in an individual health plan as the subscriber or an enrollee, or the dependent or spouse of a subscriber or enrollee.

(4) "Basic health plan" means the plan described under chapter 70.47 RCW, as revised from time to time.

(5) "Basic health plan model plan" means a health plan as required in RCW 70.47.060(2)(e).

(6) "Basic health plan services" means that schedule of covered health services, including the description of how those benefits are to be administered, that are required to be delivered to an enrollee under the basic health plan, as revised from time to time.

(7) "Board" means the governing board of the Washington health benefit exchange established in chapter 43.71 RCW.

(8)(a) For grandfathered health benefit plans issued before January 1, 2014, and renewed thereafter, "catastrophic health plan" means:

(i) In the case of a contract, agreement, or policy covering a single enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, one thousand seven hundred fifty dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least three thousand five hundred dollars, both amounts to be adjusted annually by the insurance commissioner; and

(ii) In the case of a contract, agreement, or policy covering more than one enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, three thousand five hundred dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least six thousand dollars, both amounts to be adjusted annually by the insurance commissioner.

(b) In July 2008, and in each July thereafter, the insurance commissioner shall adjust the minimum deductible and out-of-pocket expense required for a plan to qualify as a catastrophic plan to reflect the percentage change in the consumer price index for medical care for a preceding twelve months, as determined by the United States department of labor. For a plan year beginning in 2014, the out-of-pocket limits must be adjusted as specified in section 1302(c)(1) of P.L. 111-148 of 2010, as amended. The adjusted amount shall apply on the following January 1st.

(c) For health benefit plans issued on or after January 1, 2014, "catastrophic health plan" means:

(i) A health benefit plan that meets the definition of catastrophic plan set forth in section 1302(e) of P.L. 111-148 of 2010, as amended; or

(ii) A health benefit plan offered outside the exchange marketplace that requires a calendar year deductible or out-of-pocket expenses under the plan, other than for premiums, for covered benefits, that meets or exceeds the commissioner's annual adjustment under (b) of this subsection.

(9) "Certification" means a determination by a review organization that an admission, extension of stay, or other health care service or procedure has been reviewed and, based on the information provided, meets the clinical requirements for medical necessity, appropriateness, level of care, or effectiveness under the auspices of the applicable health benefit plan.

(10) "Concurrent review" means utilization review conducted during a patient's hospital stay or course of treatment.

(11) "Covered person" or "enrollee" means a person covered by a health plan including an enrollee, subscriber, policyholder, beneficiary of a group plan, or individual covered by any other health plan.

(12) "Dependent" means, at a minimum, the enrollee's legal spouse and dependent children who qualify for coverage under the enrollee's health benefit plan.

(13) "Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in a condition (a) placing the health of the individual, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy, (b) serious impairment to bodily functions, or (c) serious dysfunction of any bodily organ or part.

(14) "Emergency services" means a medical screening examination, as required under section 1867 of the social security act (42 U.S.C. 1395dd), that is within the capability of the emergency department of a hospital, including ancillary services routinely available to the emergency department to evaluate that emergency medical condition, and further medical examination and treatment, to the extent they are within the capabilities of the staff and facilities available at the hospital, as are required under section 1867 of the social security act (42 U.S.C. 1395dd) to stabilize the patient. Stabilize, with respect to an emergency medical condition, has the meaning given in section 1867(e)(3) of the social security act (42 U.S.C. 1395dd(e)(3)).

(15) "Employee" has the same meaning given to the term, as of January 1, 2008, under section 3(6) of the federal employee retirement income security act of 1974.

(16) "Enrollee point-of-service cost-sharing" means amounts paid to health carriers directly providing services, health care providers, or health care facilities by enrollees and may include copayments, coinsurance, or deductibles.

(17) "Exchange" means the Washington health benefit exchange established under chapter 43.71 RCW.

(18) "Final external review decision" means a determination by an independent review organization at the conclusion of an external review.

(19) "Final internal adverse benefit determination" means an adverse benefit determination that has been upheld by a health plan or carrier at the completion of the internal appeals process, or an adverse benefit determination with respect to which the internal appeals process has been exhausted under the exhaustion rules described in RCW 48.43.530 and 48.43.535.

(20) "Grandfathered health plan" means a group health plan or an individual health plan that under section 1251 of the patient protection and affordable care act, P.L. 111-148 (2010) and as amended by the health care and education reconciliation act, P.L. 111-152 (2010) is not subject to subtitles A or C of the act as amended.

(21) "Grievance" means a written complaint submitted by or on behalf of a covered person regarding service delivery issues other than denial of payment for medical services or nonprovision of medical services, including dissatisfaction with medical care, waiting time for medical services, provider or staff attitude or demeanor, or dissatisfaction with service provided by the health carrier.

(22) "Health care facility" or "facility" means hospices licensed under chapter 70.127 RCW, hospitals licensed under chapter 70.41 RCW, rural health care facilities as defined in RCW 70.175.020, psychiatric hospitals licensed under chapter 71.12 RCW, nursing homes licensed under chapter 18.51 RCW, community mental health centers licensed under chapter 71.05 or 71.24 RCW, kidney disease treatment centers licensed under chapter 70.41 RCW, ambulatory diagnostic, treatment, or surgical facilities licensed under chapter 70.41 RCW, drug and alcohol treatment facilities licensed under chapter 70.96A RCW, and home health agencies licensed under chapter 70.127 RCW, and includes such facilities if owned and operated by a political subdivision or instrumentality of the state and such other facilities as required by federal law and implementing regulations.

(23) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

(24) "Health care service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(25) "Health carrier" or "carrier" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, or a health maintenance organization as defined in RCW 48.46.020, and includes "issuers" as that term is used in the patient protection and affordable care act (P.L. 111-148).

(26) "Health plan" or "health benefit plan" means any policy, contract, or agreement offered by a health carrier to provide, arrange, reimburse, or pay for health care services except the following:

(a) Long-term care insurance governed by chapter 48.84 or 48.83 RCW;

(b) Medicare supplemental health insurance governed by chapter 48.66 RCW;

(c) Coverage supplemental to the coverage provided under chapter 55, Title 10, United States Code;

(d) Limited health care services offered by limited health care service contractors in accordance with RCW 48.44.035;

(e) Disability income;

(f) Coverage incidental to a property/casualty liability insurance policy such as automobile personal injury protection coverage and homeowner guest medical;

(g) Workers' compensation coverage;

(h) Accident only coverage;

(i) Specified disease or illness-triggered fixed payment insurance, hospital confinement fixed payment insurance, or other fixed payment insurance offered as an independent, noncoordinated benefit;

(j) Employer-sponsored self-funded health plans;

(k) Dental only and vision only coverage;

(l) Plans deemed by the insurance commissioner to have a short-term limited purpose or duration, or to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular full-time undergraduate or graduate student at an accredited higher education institution, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner; and

(m) Civilian health and medical program for the veterans affairs administration (CHAMPVA).

(27) "Individual market" means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

(28) "Material modification" means a change in the actuarial value of the health plan as modified of more than five percent but less than fifteen percent.

(29) "Open enrollment" means a period of time as defined in rule to be held at the same time each year, during which applicants may enroll in a carrier's individual health benefit plan without being subject to health screening or otherwise required to provide evidence of insurability as a condition for enrollment.

(30) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

(31) "Premium" means all sums charged, received, or deposited by a health carrier as consideration for a health

plan or the continuance of a health plan. Any assessment or any "membership," "policy," "contract," "service," or similar fee or charge made by a health carrier in consideration for a health plan is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point-of-service cost-sharing.

(32) "Review organization" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, health care service contractor as defined in RCW 48.44.010, or health maintenance organization as defined in RCW 48.46.020, and entities affiliated with, under contract with, or acting on behalf of a health carrier to perform a utilization review.

(33) "Small employer" or "small group" means any person, firm, corporation, partnership, association, political subdivision, sole proprietor, or self-employed individual that is actively engaged in business that employed an average of at least one but no more than fifty employees, during the previous calendar year and employed at least one employee on the first day of the plan year, is not formed primarily for purposes of buying health insurance, and in which a bona fide employer-employee relationship exists. In determining the number of employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of taxation by this state, shall be considered an employer. Subsequent to the issuance of a health plan to a small employer and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, a small employer shall continue to be considered a small employer until the plan anniversary following the date the small employer no longer meets the requirements of this definition. A self-employed individual or sole proprietor who is covered as a group of one must also: (a) Have been employed by the same small employer or small group for at least twelve months prior to application for small group coverage, and (b) verify that he or she derived at least seventy-five percent of his or her income from a trade or business through which the individual or sole proprietor has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form 1040, schedule C or F, for the previous taxable year, except a self-employed individual or sole proprietor in an agricultural trade or business, must have derived at least fifty-one percent of his or her income from the trade or business through which the individual or sole proprietor has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form 1040, for the previous taxable year.

(34) "Special enrollment" means a defined period of time of not less than thirty-one days, triggered by a specific qualifying event experienced by the applicant, during which applicants may enroll in the carrier's individual health benefit plan without being subject to health screening or otherwise required to provide evidence of insurability as a condition for enrollment.

(35) "Standard health questionnaire" means the standard health questionnaire designated under chapter 48.41 RCW.

(36) "Utilization review" means the prospective, concurrent, or retrospective assessment of the necessity and appropriateness of the allocation of health care resources and services of a provider or facility, given or proposed to be given to an enrollee or group of enrollees.

(37) "Wellness activity" means an explicit program of an activity consistent with department of health guidelines, such as, smoking cessation, injury and accident prevention, reduction of alcohol misuse, appropriate weight reduction, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education for the purpose of improving enrollee health status and reducing health service costs.

(38) "Essential health benefit categories" means:

(a) Ambulatory patient services;

(b) Emergency services;

(c) Hospitalization;

(d) Maternity and newborn care;

(e) Mental health and substance use disorder services, including behavioral health treatment;

(f) Prescription drugs;

(g) Rehabilitative and habilitative services and devices;

(h) Laboratory services;

(i) Preventive and wellness services and chronic disease management; and

(j) Pediatric services, including oral and vision care.

PART II

GUARANTEED ISSUE AND ELIGIBILITY

Sec. 2. RCW 48.43.012 and 2011 c 315 s 3 are each amended to read as follows:

(1) No carrier may reject an individual for an individual or group health benefit plan based upon preexisting conditions of the individual (~~except as provided in RCW 48.43.018~~).

(2) No carrier may deny, exclude, or otherwise limit coverage for an individual's preexisting health conditions (~~except as provided in this section~~) including, but not limited to, preexisting condition exclusions or waiting periods.

(3) (~~For an individual health benefit plan originally issued on or after March 23, 2000, preexisting condition waiting periods imposed upon a person enrolling in an individual health benefit plan shall be no more than nine months for a preexisting condition for which medical advice was given, for which a health care provider recommended or provided treatment, or for which a prudent layperson would have sought advice or treatment, within six months prior to the effective date of the plan. No carrier may impose a preexisting condition waiting period on an individual health~~

~~benefit plan issued to an eligible individual as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. 300gg 41(b)).~~

~~(4) Individual health benefit plan preexisting condition waiting periods shall not apply to prenatal care services.~~

~~(5)) No carrier may avoid the requirements of this section through the creation of a new rate classification or the modification of an existing rate classification. A new or changed rate classification will be deemed an attempt to avoid the provisions of this section if the new or changed classification would substantially discourage applications for coverage from individuals who are higher than average health risks. These provisions apply only to individuals who are Washington residents.~~

~~((6) For any person under age nineteen applying for coverage as allowed by RCW 48.43.0122(1) or enrolled in a health benefit plan subject to sections 1201 and 10103 of the patient protection and affordable care act (P.L. 111-148) that is not a grandfathered health plan in the individual market, a carrier must not impose a preexisting condition exclusion or waiting period or other limitations on benefits or enrollment due to a preexisting condition.))~~

(4) Unless preempted by federal law, the commissioner shall adopt any rules necessary to implement this section, consistent with federal rules and guidance in effect on January 1, 2017, implementing the patient protection and affordable care act.

NEW SECTION. Sec. 3. A new section is added to chapter 48.43 RCW to read as follows:

(1) A health carrier or health plan may not establish rules for eligibility, including continued eligibility, of any individual to enroll under the terms of the plan or coverage based on any of the following health status-related factors in relation to the individual or a dependent of the individual:

- (a) Health status;
- (b) Medical condition, including both physical and mental illnesses;
- (c) Claims experience;
- (d) Receipt of health care;
- (e) Medical history;
- (f) Genetic information;
- (g) Evidence of insurability, including conditions arising out of acts of domestic violence;
- (h) Disability; or
- (i) Any other health status-related factor determined appropriate by the commissioner.

(2) Unless preempted by federal law, the commissioner shall adopt any rules necessary to implement this section, consistent with federal rules and guidance in

effect on January 1, 2017, implementing the patient protection and affordable care act.

Sec. 4. RCW 48.21.270 and 2011 c 314 s 2 are each amended to read as follows:

(1) An insurer shall not require proof of insurability as a condition for issuance of the conversion policy.

(2) A conversion policy may not contain an exclusion for preexisting conditions for any applicant ~~((who is under age nineteen. For policies issued to those age nineteen and older, an exclusion for a preexisting condition is permitted only to the extent that a waiting period for a preexisting condition has not been satisfied under the group policy)).~~

(3) An insurer must offer at least three policy benefit plans that comply with the following:

- (a) A major medical plan with a five thousand dollar deductible per person;
- (b) A comprehensive medical plan with a five hundred dollar deductible per person; and
- (c) A basic medical plan with a one thousand dollar deductible per person.

(4) The insurance commissioner may revise the deductible amounts in subsection (3) of this section from time to time to reflect changing health care costs.

(5) The insurance commissioner shall adopt rules to establish minimum benefit standards for conversion policies.

(6) The commissioner shall adopt rules to establish specific standards for conversion policy provisions. These rules may include but are not limited to:

- (a) Terms of renewability;
 - (b) Nonduplication of coverage;
 - (c) Benefit limitations, exceptions, and reductions;
- and
- (d) Definitions of terms.

Sec. 5. RCW 48.44.380 and 2011 c 314 s 7 are each amended to read as follows:

(1) A health care service contractor shall not require proof of insurability as a condition for issuance of the conversion contract.

(2) A conversion contract may not contain an exclusion for preexisting conditions for any applicant ~~((who is under age nineteen. For policies issued to those age nineteen and older, an exclusion for a preexisting condition is permitted only to the extent that a waiting period for a preexisting condition has not been satisfied under the group contract)).~~

(3) A health care service contractor must offer at least three contract benefit plans that comply with the following:

(a) A major medical plan with a five thousand dollar deductible per person;

(b) A comprehensive medical plan with a five hundred dollar deductible per person; and

(c) A basic medical plan with a one thousand dollar deductible per person.

(4) The insurance commissioner may revise the deductible amounts in subsection (3) of this section from time to time to reflect changing health care costs.

(5) The insurance commissioner shall adopt rules to establish minimum benefit standards for conversion contracts.

(6) The commissioner shall adopt rules to establish specific standards for conversion contract provisions. These rules may include but are not limited to:

(a) Terms of renewability;

(b) Nonduplication of coverage;

(c) Benefit limitations, exceptions, and reductions; and

(d) Definitions of terms.

Sec. 6. RCW 48.46.460 and 2011 c 314 s 9 are each amended to read as follows:

(1) A health maintenance organization must offer a conversion agreement for comprehensive health care services and shall not require proof of insurability as a condition for issuance of the conversion agreement.

(2) A conversion agreement may not contain an exclusion for preexisting conditions for an applicant (~~who is under age nineteen. For policies issued to those age nineteen and older, an exclusion for a preexisting condition is permitted only to the extent that a waiting period for a preexisting condition has not been satisfied under the group agreement~~).

(3) A conversion agreement need not provide benefits identical to those provided under the group agreement. The conversion agreement may contain provisions requiring the person covered by the conversion agreement to pay reasonable deductibles and copayments, except for preventive service benefits as defined in 45 C.F.R. 147.130 (2010), implementing sections 2701 through 2763, 2791, and 2792 of the public health service act (42 U.S.C. 300gg through 300gg-63, 300gg-91, and 300gg-92), as amended.

(4) The insurance commissioner shall adopt rules to establish minimum benefit standards for conversion agreements.

(5) The commissioner shall adopt rules to establish specific standards for conversion agreement provisions. These rules may include but are not limited to:

(a) Terms of renewability;

(b) Nonduplication of coverage;

(c) Benefit limitations, exceptions, and reductions; and

(d) Definitions of terms.

NEW SECTION. Sec. 7. The following acts or parts of acts are each repealed:

(1)RCW 48.43.015 (Health benefit plans—Preexisting conditions) and 2012 c 64 s 2, 2004 c 192 s 5, 2001 c 196 s 7, 2000 c 80 s 3, 2000 c 79 s 20, & 1995 c 265 s 5;

(2)RCW 48.43.017 (Organ transplant benefit waiting periods—Prior creditable coverage) and 2009 c 82 s 2;

(3)RCW 48.43.018 (Requirement to complete the standard health questionnaire—Exemptions—Results) and 2012 c 211 s 16, 2012 c 64 s 1, 2010 c 277 s 1, & 2009 c 42 s 1; and

(4)RCW 48.43.025 (Group health benefit plans—Preexisting conditions) and 2001 c 196 s 9, 2000 c 79 s 23, & 1995 c 265 s 6.

PART III

PROHIBITING UNFAIR RESCISSIONS

NEW SECTION. Sec. 8. A new section is added to chapter 48.43 RCW to read as follows:

(1) A health plan or health carrier offering group or individual coverage may not rescind such coverage with respect to an enrollee once the enrollee is covered under the plan or coverage involved, except that this section does not apply to a covered person who has performed an act or practice that constitutes fraud or makes an intentional misrepresentation of material fact as prohibited by the terms of the plan or coverage. The plan or coverage may not be canceled except as permitted under RCW 48.43.035 or 48.43.038.

(2) The commissioner shall adopt any rules necessary to implement this section, consistent with federal rules and guidance in effect on January 1, 2017, implementing the patient protection and affordable care act.

PART IV

ESSENTIAL HEALTH BENEFITS

Sec. 9. RCW 48.43.715 and 2013 c 325 s 1 are each amended to read as follows:

(1) (~~Consistent with federal law,~~) The commissioner, in consultation with the board and the health care authority, shall, by rule, select the largest small group plan in the state by enrollment as the benchmark plan for the individual and small group market for purposes of establishing the essential health benefits in Washington state (~~under P.L. 111-148 of 2010, as amended~~).

(2) If the essential health benefits benchmark plan for the individual and small group market does not include all of the ten essential health benefits categories (~~(specified by section 1302 of P.L. 111-148, as amended)~~), the commissioner, in consultation with the board and the health care authority, shall, by rule, supplement the benchmark plan benefits as needed (~~(to meet the minimum requirements of section 1302)~~).

(3) ~~((A))~~ All individual and small group health plans (~~(required to offer)~~) must cover the ten essential health benefits categories, other than a health plan offered through the federal basic health program, a grandfathered health plan, or medicaid (~~(under P.L. 111-148 of 2010, as amended)~~). Such a health plan may not be offered in the state unless the commissioner finds that it is substantially equal to the benchmark plan. When making this determination, the commissioner:

(a) Must ensure that the plan covers the ten essential health benefits categories (~~(specified in section 1302 of P.L. 111-148 of 2010, as amended)~~);

(b) May consider whether the health plan has a benefit design that would create a risk of biased selection based on health status and whether the health plan contains meaningful scope and level of benefits in each of the ten essential health benefits categories (~~(specified by section 1302 of P.L. 111-148 of 2010, as amended)~~);

(c) Notwithstanding (~~(the foregoing)~~) (a) and (b) of this subsection, for benefit years beginning January 1, 2015, (~~(and only to the extent permitted by federal law and guidance)~~) must establish by rule the review and approval requirements and procedures for pediatric oral services when offered in stand-alone dental plans in the nongrandfathered individual and small group markets outside of the exchange; and

(d) (~~(Unless prohibited by federal law and guidance)~~) Must allow health carriers to also offer pediatric oral services within the health benefit plan in the nongrandfathered individual and small group markets outside of the exchange.

(4) Beginning December 15, 2012, and every year thereafter, the commissioner shall submit to the legislature a list of state-mandated health benefits, the enforcement of which will result in federally imposed costs to the state related to the plans sold through the exchange because the benefits are not included in the essential health benefits designated under federal law. The list must include the anticipated costs to the state of each state-mandated health benefit on the list and any statutory changes needed if funds are not appropriated to defray the state costs for the listed mandate. The commissioner may enforce a mandate on the list for the entire market only if funds are appropriated in an omnibus appropriations act specifically to pay the state portion of the identified costs.

PART V

COST SHARING

NEW SECTION. Sec. 10. A new section is added to chapter 48.43 RCW to read as follows:

(1) For plan years beginning in 2020, the cost sharing incurred under a health plan for the essential health benefits may not exceed the following amounts:

(a) For self-only coverage:

(i) The amount required under federal law for the calendar year; or

(ii) If there are no cost-sharing requirements under federal law, eight thousand two hundred dollars increased by the premium adjustment percentage for the calendar year.

(b) For coverage other than self-only coverage:

(i) The amount required under federal law for the calendar year; or

(ii) If there are no cost-sharing requirements under federal law, sixteen thousand four hundred dollars increased by the premium adjustment percentage for the calendar year.

(2) Regardless of whether an enrollee is covered by a self-only plan or a plan that is other than self-only, the enrollee's cost sharing for the essential health benefits may not exceed the self-only annual limitation on cost sharing.

(3) For purposes of this section, "the premium adjustment percentage for the calendar year" means the percentage, if any, by which the average per capita premium for health insurance in Washington for the preceding year, as estimated by the commissioner no later than April 1st of such preceding year, exceeds such average per capita premium for 2020 as determined by the commissioner.

(4) Unless preempted by federal law, the commissioner shall adopt any rules necessary to implement this section, consistent with federal rules and guidance in effect on January 1, 2017, implementing the patient protection and affordable care act.

PART VI

OPEN ENROLLMENT PERIODS

Sec. 11. RCW 48.43.0122 and 2011 c 315 s 4 are each amended to read as follows:

(1) The commissioner shall adopt rules establishing and implementing requirements for the open enrollment periods and special enrollment periods that carriers must follow for individual health benefit plans (~~(and enrollment of persons under age nineteen)~~).

(2) The commissioner shall monitor the sale of individual health benefit plans and if a carrier refuses to sell guaranteed issue policies to persons (~~(under age nineteen)~~) in compliance with rules adopted by the commissioner pursuant to subsection (1) of this section, the commissioner may levy fines or suspend or revoke a certificate of authority as provided in chapter 48.05 RCW.

PART VII

LIFETIME LIMITS

NEW SECTION. Sec. 12. A new section is added to chapter 48.43 RCW to read as follows:

A health carrier may not impose annual or lifetime dollar limits on an essential health benefit, other than those permitted as reference-based limitations under rules adopted by the commissioner.

PART VIII**EXPLANATION OF COVERAGE**

NEW SECTION. Sec. 13. A new section is added to chapter 48.43 RCW to read as follows:

(1) The commissioner shall develop standards for use by a health carrier offering individual or group coverage, in compiling and providing to applicants and enrollees a summary of benefits and coverage explanation that accurately describes the benefits and coverage under the applicable plan. In developing the standards, the commissioner must use the standards developed under 42 U.S.C. Sec. 300gg-15 in use on the effective date of this section.

(2) The standards must provide for the following:

(a) The standards must ensure that the summary of benefits and coverage is presented in a uniform format that does not exceed four pages in length and does not include print smaller than twelve-point font.

(b) The standards must ensure that the summary is presented in a culturally and linguistically appropriate manner and utilizes terminology understandable by the average plan enrollee.

(c) The standards must ensure that the summary of benefits and coverage includes:

(i) Uniform definitions of standard insurance and medical terms, consistent with the standard definitions developed under this section, so that consumers may compare health insurance coverage and understand the terms of coverage, or exceptions to such coverage;

(ii) A description of the coverage, including cost sharing for:

(A) The essential health benefits; and

(B) Other benefits identified by the commissioner;

(iii) The exceptions, reductions, and limitations on coverage;

(iv) The cost-sharing provisions, including deductible, coinsurance, and copayment obligations;

(v) The renewability and continuation of coverage provisions;

(vi) A coverage facts label that includes examples to illustrate common benefits scenarios, including pregnancy

and serious or chronic medical conditions and related cost sharing. The scenarios must be based on recognized clinical practice guidelines;

(vii) A statement of whether the plan:

(A) Provides minimum essential coverage under 26 U.S.C. Sec. 5000A(f); and

(B) Ensures that the plan share of the total allowed costs of benefits provided under the plan is no less than sixty percent of the costs;

(viii) A statement that the outline is a summary of the policy or certificate and that the coverage document itself should be consulted to determine the governing contractual provisions; and

(ix) A contact number for the consumer to call with additional questions and a web site where a copy of the actual individual coverage policy or group certificate of coverage may be reviewed and obtained.

(3) The commissioner shall periodically review and update the standards developed under this section.

(4) A health carrier must provide a summary of benefits and coverage explanation to:

(a) An applicant at the time of application;

(b) An enrollee prior to the time of enrollment or reenrollment, as applicable; and

(c) A policyholder or certificate holder at the time of issuance of the policy or delivery of the certificate.

(5) A health carrier may provide the summary of benefits and coverage either in paper or electronically.

(6) If a health carrier makes any material modification in any of the terms of the plan that is not reflected in the most recently provided summary of benefits and coverage, the carrier shall provide notice of the modification to enrollees no later than sixty days prior to the date on which the modification will become effective.

(7) A health carrier that fails to provide the information required under this section is subject to a fine of no more than one thousand dollars for each failure. A failure with respect to each enrollee constitutes a separate offense for purposes of this subsection.

(8) The commissioner shall, by rule, provide for the development of standards for the definitions of terms used in health insurance coverage, including the following:

(a) Insurance-related terms, including premium; deductible; coinsurance; copayment; out-of-pocket limit; preferred provider; nonpreferred provider; out-of-network copayments; usual, customary, and reasonable fees; excluded services; grievance; appeals; and any other terms the commissioner determines are important to define so that consumers may compare health insurance coverage and understand the terms of their coverage; and

(b) Medical terms, including hospitalization, hospital outpatient care, emergency room care, physician services, prescription drug coverage, durable medical

equipment, home health care, skilled nursing care, rehabilitation services, hospice services, emergency medical transportation, and any other terms the commissioner determines are important to define so that consumers may compare the medical benefits offered by health insurance and understand the extent of those medical benefits or exceptions to those benefits.

(9) Unless preempted by federal law, the commissioner shall adopt any rules necessary to implement this section, consistent with federal rules and guidance in effect on January 1, 2017, implementing the patient protection and affordable care act.

PART IX

WAITING PERIODS FOR GROUP COVERAGE

NEW SECTION. Sec. 14. A new section is added to chapter 48.43 RCW to read as follows:

(1) A group health plan and a health carrier offering group health coverage may not apply any waiting period that exceeds ninety days.

(2) Unless preempted by federal law, the commissioner shall adopt any rules necessary to implement this section, consistent with federal rules and guidance in effect on January 1, 2017, implementing the patient protection and affordable care act.

PART X

PROHIBITING ISSUER AND HEALTH PLAN DISCRIMINATION

NEW SECTION. Sec. 15. A new section is added to chapter 48.43 RCW to read as follows:

(1) A health carrier offering a nongrandfathered health plan in the individual or small group market may not:

(a) In its benefit design or implementation of its benefit design, discriminate against individuals because of their age, expected length of life, present or predicted disability, degree of medical dependency, quality of life, or other health conditions; and

(b) With respect to the health plan, discriminate on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation.

(2) Nothing in this section may be construed to prevent an issuer from appropriately utilizing reasonable medical management techniques.

(3) Unless preempted by federal law, the commissioner shall adopt any rules necessary to implement this section, consistent with federal rules and guidance in effect on January 1, 2017, implementing the patient protection and affordable care act.

NEW SECTION. Sec. 16. A new section is added to chapter 43.71 RCW to read as follows:

(1) For qualified health plans, an issue offering a qualified health plan may not employ marketing practices or benefit designs that have the effect of discouraging enrollment in the plan by individuals with significant health needs.

(2) Unless preempted by federal law, the commissioner shall adopt any rules necessary to implement this section, consistent with federal rules and guidance in effect on January 1, 2017, implementing the patient protection and affordable care act.

NEW SECTION. Sec. 17. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

On page 1, line 3 of the title, after "act;" strike the remainder of the title and insert "amending RCW 48.43.005, 48.43.012, 48.21.270, 48.44.380, 48.46.460, 48.43.715, and 48.43.0122; adding new sections to chapter 48.43 RCW; adding a new section to chapter 43.71 RCW; repealing RCW 48.43.015, 48.43.017, 48.43.018, and 48.43.025; prescribing penalties; and declaring an emergency."

and the same is herewith transmitted.

Sarah Bannister, Deputy, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 1870 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representative Davis spoke in favor of the passage of the bill.

Representatives Schmick and Klippert spoke against the passage of the bill.

MOTION

On motion of Representative Griffey, Representative Volz was excused.

The Speaker (Representative Orwall presiding) stated the question before the House to be the final passage of Substitute House Bill No. 1870, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 1870, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 56; Nays, 37; Absent, 0; Excused, 5.

Voting yea: Representatives Appleton, Bergquist, Blake, Callan, Chapman, Chopp, Cody, Davis, Doglio, Dolan, Entenman, Fey, Fitzgibbon, Frame, Goodman, Gregerson, Hansen, Hudgins, Jinkins, Kilduff, Kirby, Kloba, Leavitt, Lekanoff, Lovick, Macri, Mead, Morgan, Morris, Ormsby, Ortiz-Self, Orwall, Paul, Pellicciotti, Pettigrew, Pollet, Ramos, Reeves, Riccelli, Robinson, Ryu, Santos, Sells, Senn, Shewmake, Slatter, Springer, Stanford, Stonier, Sullivan, Tarleton, Thai, Tharinger, Valdez, Walen and Wylie.

Voting nay: Representatives Barkis, Boehnke, Caldier, Chambers, Chandler, Corry, Dent, Dufault, Dye, Eslick, Gildon, Goehner, Graham, Griffey, Harris, Hoff, Irwin, Jenkin, Klippert, Kraft, Kretz, MacEwen, McCaslin, Mosbrucker, Orcutt, Rude, Schmick, Shea, Smith, Steele, Stokesbary, Sutherland, Van Werven, Walsh, Wilcox, Ybarra and Young.

Excused: Representatives DeBolt, Maycumber, Peterson, Vick and Volz.

SUBSTITUTE HOUSE BILL NO. 1870, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

There being no objection, the House adjourned until 9:55 a.m., April 2, 2019, the 79th Day of the Regular Session.

FRANK CHOPP, Speaker

BERNARD DEAN, Chief Clerk