Tribal Behavioral Health Crisis Care Act

Behavioral Health Language for 2019 Session



American Indian Health Commission for Washington State American Indian Health Commission for Washington State About Us

Pulling Together for Wellness

• We are a Tribally-driven, non-profit organization providing a forum for the twentynine tribal governments and two urban Indian health programs in Washington State to work together to improve health outcomes for American Indians and Alaska Natives.

AMERICAN INDIAN HEALTH COMMISSION FOR WASHINGTON STATE



2019 Behavioral Health Legislation

Addressing Long Standing Issues in the Crisis System

REQUEST TO ADDRESS ISSUES FOR AI/AN IN THE MENTAL HEALTH SYSTEM

Since 2006, Tribal Leaders have been formally requesting changes to the Regional Support Network System (RSN) based on access barriers suffered by AI/AN seeking. At the 2009 Statewide Tribal Mental Health Conference, State Leadership recognized that a managed care system without a requirement to acknowledge and constructively work with Tribal Governments cannot adequately respond to, and appropriately serve, American Indians and/or Alaskan Natives (AI/AN). The State Legislature funded the 2013 Tribal Centric Behavioral Health Report to Legislature to formalize recommendations to create a Tribal Centric System. The report was submitted in December of 2013.

Ongoing Work since 2014

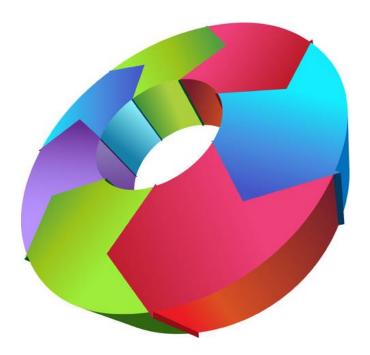
Since then, Tribal and Urban Indian Health Program (UIHP) Leaders and their staff, AIHC and the NPAHB have been working with the State to develop a "Tribal Centric Behavioral Health" system that honors the choice of the AI/AN patient while valuing the importance of the AI/AN relationship with an Indian Health Care Provider (IHCP).

Program, policy and contracting issues have been worked through; the remaining issues require legislative change in order to address.

AIHC Tribal ITA Legislative Drafting Process

- Outreach to Tribal leaders and Indian health care providers
- Review historical Tribal behavioral health recommendations:

 2013 Report to the Legislature
 Washington State Tribal Centric Health Plan Agreement
 1915b Roundtables and Consultation
- Review of RCW 71.05
- Review of Arizona model
- Review of ICW laws for parallel application
- Meetings with State and County experts: DSHS Staff, Whatcom Co Commissioner, Legislators and legislative staff



Issues will be addressed by legislation to:

- Formalize Tribal Designated Crisis Responder, DCR, appointed and funded through Tribal Governments
- Institutionalize government and cultural training for non-Tribal DCR
- Tribal Government notification of AI/AN ITA proceedings.
- Ensure access to voluntary beds for AI/AN enrolled in Fee for Service Program
- Managed Care Entities honor Indian Health Care Provider assessments

Tribal Designated Crisis Responders

Tribal Designated Crisis Responder (DCR) does not need legislation to implement.

Legislation is required to ensure Tribal Courts can appoint Tribal DCRs through their own process.

Proposed Legislative Fix: Tribally appointed DCRs

"Designated crisis responder" means a mental health professional appointed by the county, an entity appointed by the county, or the behavioral health organization to perform the duties specified in this chapter, <u>or a federally-recognized tribe</u>.

RCW 71.05.020(14)



Proposed Legislative Fix: Definition of Peace Officer to include tribal government

"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

RCW 71.05.20(40)

Training for non-Tribal DCRs

Designated Crisis Responder (DCR) do not have a standard for providing services to AI/AN

Legislation to institutionalize training to provide culturally appropriate services where a Tribal DCR is not available

Amend RCW 71.05.760

- Develop core concepts for a AI/AN module for DCR training
- Develop a web-based core training with the ability to adapt.
- Work with Tribal leaders to contribute to curriculums core concepts and include Tribal leaders' stories and experiences within the module.
- Require DCRs to have core concept skills and training hours in working with Tribal Governments.
- Training has been done in the past but there is no regularly scheduled training

Tribal Notification of AI/AN Involuntary Treatment Admissions

Tribes and IHCP providers are not notified or excluded from proceedings when AI/AN is detained, admitted or released under an ITA law.

Legislation is needed to ensure proper coordination for between DCR, Facilities, Tribes and IHCP

Amend RCW 71.05.760

- Require notice and right of IHCP provider to intervene in state court proceedings.
- Require DCRs who performs an investigation and evaluation of an AI/AN to notify IHCP regarding whether a petition was filed or not.
- Provide IHCP the right to have second DCR opinion of their choosing when the first DCR declines to file a petition for initial detention or involuntary outpatient evaluation.
- Prior to discharge or release, the E&T facility shall provide reasonable notice to the IHCP's designated crisis responder of the E&T facility's intention to discharge or release the person.

Proposed Legislative Fix: Petition for Initial Detention by Tribal Government

(1) If a designated crisis responder decides not to detain a person for evaluation and treatment under RCW 71.05.150 or 71.05.153 or forty-eight hours have elapsed since a designated crisis responder received a request for investigation and the designated crisis responder has not taken action to have the person detained, an immediate family member or guardian or conservator of the person <u>or tribal government of which tribe the person is a member</u> may petition the superior court for the person's initial detention.

RCW 71.05.201(1)

Proposed Legislative Fix: Tribal Governments Added to ITA language

RCW 71.05.150(5)

An Indian tribe shall have jurisdiction exclusive to the state as to any involuntary commitment of an American Indian to an evaluation and treatment facility located within the boundaries of that tribe, except where such jurisdiction is otherwise vested in the state by existing federal law.

Proposed Legislative Fix: Added Language Tribal Governments Intervening in Proceedings:

RCW 71.05.150(6)

In any state court proceeding for the involuntary treatment of an American Indian or Alaska Native to an evaluation and treatment facility located outside the boundaries of the American Indian or Alaska Native's tribe, the American Indian or Alaska Native's Indian health care provider shall have a right to intervene at any point in the proceeding.

Proposed Legislative Fix: Tribal Governments Informed of Evaluation

RCW 71.05.150(7)

If a designated crisis responder performs an investigation and evaluation under RCW 71.05.150(1)(a) of an American Indian or Alaska Native, the designated crisis responder shall make reasonable efforts to inform, when applicable, the American Indian or Alaska Native's Indian health care provider regarding whether or not a petition for initial detention or involuntary outpatient evaluation will be filed under RCW 71.05.150.

Proposed Legislative Fix: DCR- Second Opinion

RCW 71.05.150(8)

If a designated crisis responder performs an investigation and evaluation under RCW 71.05.150 and does not file a petition for initial detention or involuntary outpatient evaluation, the American Indian or Alaska Native's Indian health care provider may request a designated crisis responder of their choosing to review the designated crisis responder's initial evaluation. If the Indian health care provider's requested designated crisis responder finds the requirements under RCW 71.05.150(1)(a) for initial detention or involuntary outpatient evaluation have been met, the designated crisis responder may file a petition for initial detention or involuntary outpatient evaluation or involuntary outpatient evaluation for initial detention or involuntary outpatient evaluation for initial detention or involuntary outpatient evaluation for involuntary outpatient evaluation or involuntary outpatient evaluation or involuntary outpatient evaluation or involuntary outpatient evaluation or involuntary outpatient evaluation for initial detention or involuntary outpatient evaluation or involuntary outpatient evaluation under RCW 71.05.150(1)(a).

Proposed Legislative Fix: Tribal Governments Informed of Discharge

RCW 71.05.150(9)

Decisions regarding discharge or release of a person detained under the petition of an Indian health care provider's designated crisis responder shall be made by the evaluation and treatment facility providing involuntary treatment. Prior to discharge or release, the evaluation and treatment facility shall provide reasonable notice to the Indian health care provider's designated crisis responder of the evaluation and treatment facility's intention to discharge or release the person. Any necessary outpatient follow-up and transportation for the person to the Indian health care provider's facility, within the time set forth in the notice, shall be provided for in an agreement between the Indian health care provider and the state.

Lack of beds for AI/AN patients for voluntary treatment

The number of beds available in the Fee For Services, FFS, program needs be at least equal to the percentage of AI/AN population in FFS program

Legislation is required to ensure inpatient beds are available in the FFS program

Amend RCW 71.24.045

- Assure inpatient psychiatric and evaluation and treatment beds are available to AI/AN patients on at least the same proportionate
 basis as the AI/AN population is to the Medicaid population.
- Currently, in some regions, BHOs are purchasing all/most beds which does not allow for access to beds for individuals outside of the BHO (FFS). This is interfering with the FFS program and access for AI/AN individuals.
- Recommend that in this section, we identify language to ensure that there is access to beds, based on need of population (12%). BHOs received finding for the population in their region, however if they are in the FFS program, then they are no longer covered under BHO for crisis services.
- The Reinvestment account may be able to positively impact this issue.

Proposed Legislative Fix: Appropriate Access to Inpatient Beds

RCW 71.05.150(10)

The authority shall assure that inpatient psychiatric and evaluation and treatment beds are available to American Indian and Alaska Natives patients on at least the same proportionate basis as the American Indian and Alaska Native population is to the medicaid population. The authority shall provide a report on psychiatric treatment and evaluation and bed utilization for American Indians and Alaska Natives. The report shall be available for review by the tribes, urban Indian health programs, and the American Indian health commission for Washington state

IHCP Assessments and Managed Care Organizations

AI/AN clients assessed by their IHCP are required to receive a second assessment through the MCO, BHO or ASO prior to services being authorized.

These assessments are not culturally appropriate, unnecessary extra step and often end up in client "not meeting criteria."

Amend RCW 71.24.565 or 71.24.845

- Managed Care Entities have a right to oversee this process as they see fit. Might not be able to require MCEs to accept assessment and evaluations.
- Tribal leaders have been requesting full faith and credit for the assessments they conduct for their tribal members.
- Could IHCP use a form generated by MCO that meets their requirements?
- In Wisconsin, there was a 3 way contract negotiated with the MCO, State and each Tribe in which each tribe is given control of utilization management over the funds for their citizens.
- Are there MCOs that do not require preauthorizations?

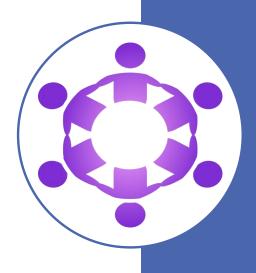
JURISDICTIONAL ISSUES AND

FULL FAITH AND CREDIT

WHERE MUST ITA PETITIONS/PROCEEDINGS MUST BE BROUGHT IN WASHINGTON STATE?

Generally: "Proceedings pursuant to RCW 71.05 shall be brought in the <u>superior court of the county in which the</u> <u>person is being detained</u>." Superior Court Mental Proceedings Rules (MPR), 5.1

Transfers to County of Respondent's Residence: "The court, for good cause, may transfer a proceeding to the county of respondent's residence, or to the county in which the alleged conduct evidencing need or treatment occurred." Superior Court Mental Proceedings Rules (MPR), 5.1



ITA PETITIONS/PROCEEDINGS IN TRIBAL NATIONS

- Tribal courts have sovereign authority to order civil commitments upon tribal members
- Rules/Procedures will vary with each individual tribal nation
- For an example, see Suquamish Involuntary Treatment and Civil Commitment Code, 10.7

https://suquamish.nsn.us/wp-content/uploads/2016/11/Chapter-10.7.pdf Washington Superior Courts are required to recognize tribal court orders including involuntary commitment orders so long as due process is met.

WHAT HAPPENS IF A TRIBAL COURT SUBMITS A COURT ORDER TO WA SUPERIOR COURT FOR ENFORCEMENT BY THE SUPERIOR COURT?

Washington Full Faith and Credit Rule

Enforcement of Indian Tribal Court Orders, Judgments or Decrees. The superior courts of the State of Washington <u>shall</u> recognize, implement and enforce the orders, judgments and decrees of Indian tribal courts in matters in which either the exclusive or concurrent jurisdiction has been granted or reserved to an Indian tribal court of a federally recognized tribe under the Laws of the United States, unless the superior court finds the tribal court that rendered the order, judgment or decree:

(1) lacked jurisdiction over a party or the subject matter,

(2) denied due process as provided by the Indian Civil Rights Act of 1968, or

(3) does not reciprocally provide for recognition and implementation of orders, judgments and decrees of the superior courts of the State of Washington.

Washington State Supreme Court Civil Rule 82.5 (c), emphasis added. https://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=sup&set=cr&ruleid=supcr82.5 American Indian Health Commission for Washington State Contact Us!

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