

# **Tribal Centric Behavioral Health Plan Amending RCW 71.05 Tribes, AI/AN, & Involuntary Commitment Orders**

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**AIHC State and Tribal Leaders Health Summit**



**American Indian Health Commission**  
*for Washington State*

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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 twenty-nine tribal governments and two urban Indian health programs in Washington State to work together to improve health outcomes for American Indians and Alaska Natives.



# State Commitment to Address Tribal Centric Health Issues

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## Washington State Tribal Centric Health Plan Agreement

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Effective July 1, 2017

Signed by Health Care Authority Director and Secretary of DSHS

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Pursuant to RCW 43.20A.897, the State “shall enter into agreements with the tribes and urban Indian health programs and modify behavioral health organization contracts as necessary to develop a tribal-centric health system that better serves the needs of the Tribes.” In doing so, the State will provide a specific timeline for completing recommendations provided in the 2013 Tribal Centric Health Report to the Legislature under RCW 43.20A.897.

<http://www.aihc-wa.com/files/2016/02/FINAL-Washington-State-Tribal-Centric-Health-Plan-Agreement-2017-10-10.pdf>

# AIHC Tribal ITA Legislative Drafting Process

- Outreach to leaders in Indian health care provider behavioral health
- Review historical tribal centric behavioral health work including:
  - 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 David Reed, BHA and DSHS staff



# Issue 1

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**Issue 1:** Confusion regarding eligibility of IHCP providers to serve as designated crisis responders

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**Proposed Legislative Fix:**  
Include IHCP providers in definition of designated crisis responder

Amend “Designated  
Crisis Responder”  
Definition RCW  
71.05.020(13)

“Designated crisis responder” means a mental health professional appointed by a tribe, Indian health care provider, or the behavioral health organization

# Issue 2

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**Issue 2:** Tribes and IHCPs are not notified and/or are excluded from AI/AN ITA decisions/proceedings

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**Proposed Legislative Fix:**  
Require notice and right of IHCP or Tribal Government to intervene in state court proceedings

# Proposed new section 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.



# Issue 3

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**Issue 3:** IHCPs have found and continue to find that Designated Crisis Responders do not notify IHCPs when their patients are being evaluated for involuntary commitment

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**Proposed Legislative Fix:** Require Designated Crisis Responder who performs an investigation and evaluation of an AI/AN to notify IHCP or Tribal Governments regarding whether a petition was filed or not

Proposed new section  
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.

# Issue 4

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**Issue 4:** IHCPs have found and continue to find that DCRs do not file petitions for involuntary commitment when the AI/AN is clearly in need of commitment

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**Proposed Legislative Fix:** 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 eval

## Proposed new section 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 under RCW 71.05.150(1)(a).

# Issue 5

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**Issue 5:** AI/AN are being released from the E&T facility without notice to or coordination with their IHCP.

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**Proposed Legislative Fix:** 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 new section  
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.

# Issue 6

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**Issue 6:** There exists a lack of beds for AI/AN patients even though a large percentage of patients within the state facilities are AI/AN

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**Proposed Legislative Fix:** 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

Proposed new section  
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.



# Issue 7

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**Issue 7:** Designated crisis responders lack training in providing culturally competent care to AI/AN.

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**Proposed Legislative Fix:** Establish written guidelines for conducting culturally appropriate evaluations of AI/AN and provide regular training on implementing these guidelines.

Proposed new section  
RCW 71.05.212(5)

The authority, in consultation with tribes and coordination with Indian health care providers, the Indian policy advisory committee of the department of social and health services, and the American Indian Health Commission for Washington State, shall establish written guidelines for conducting culturally appropriate evaluations of American Indian or Alaska Natives. The authority, in coordination with the Indian policy advisory committee of the department of social and health services, and the American Indian Health Commission for Washington State shall provide annual training to all designated crisis responders on these guidelines.

# Issue 8

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**Issue 8:** Medicaid managed care entities often do not accept IHCP evaluations and assessments of their AI/AN patients

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**Proposed Legislative Fix:** Require Medicaid managed care entities to accept assessments and evaluations from IHCPs completed by a physician for purposes of treatment determinations.

Proposed new section  
RCW 71.05.212(6)

Medicaid managed care entities will accept assessments and evaluations from Indian health care providers completed by a physician for purposes of treatment determinations.

Proposed new section  
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 Next Steps

- Clarification from Tribal Leaders on language for Indian Health Care Provider vs. Tribal Government for notification issues.
- Strategizing on whether to run legislation separately or work to include with other legislative “fixes” going in next session
- Gain a better understanding of how crisis funding flows when Administrative Services Organizations (ASO)s replace BHOs.
- Understand the “buying beds” process and decide if legislation is needed to fix access barriers.
- Full faith and credit for IHCP/Tribal assessments of their own people.

