

Washington Indian Health Improvement Act

AN ACT Relating to establishing the governor's Indian health advisory council and the Indian health improvement reinvestment account; reenacting and amending RCW 43.84.092; and adding a new chapter to Title 43 RCW.

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

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, pre-diabetes, 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 and achieving the highest possible health status for American Indians and Alaska Natives in the state; and

(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) Adopt a biennial Indian health improvement advisory plan;

(d) 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;

(e) Appropriate and deposit into the 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

(f) Require the funds in the Indian health improvement reinvestment account to be spent only on costs for projects, programs, or activities identified in the Indian health improvement 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 chapter.

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

(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. 16161, 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. 16161 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 100 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 established in section 4(1) of this chapter.

(14) "Reinvestment committee" means the Indian health improvement reinvestment committee established in section 3(3) of this chapter.

(15) "Tribal organization" has the meaning set forth in 25 U.S.C. Sec. 5304.

(16) "Tribally 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(29).

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 non-voting 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 will 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 will have the responsibility to:

(a) Adopt the biennial Indian health improvement advisory plan prepared and amended by the reinvestment committee as described in section 4 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 established in section 5 of this chapter, ensuring that amounts expended from the reinvestment account are consistent with the advisory plan adopted under section 4 of this chapter.

(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 non-voting 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 will prepare and amend from time to time a biennial Indian health improvement advisory plan to:

(a) Raise the health status of American Indians and Alaska Natives in the state to at least the levels set forth in the goals contained in the federal healthy people 2020 initiative or successor objectives; 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 will include the following:

(a) An assessment of Indian health and Indian health care in the state; and

(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) Tribally operated facilities providing evaluation, treatment, and recovery services for opioid use disorder, other substance use disorders, mental illness, or specialty care;

(ii) Increased access to quality, culturally appropriate, trauma-informed specialty services, including adult and pediatric psychiatric services, medication consultation, and addiction or geriatric psychiatry;

(iii) A third-party administrative entity to provide, arrange, and make payment for services for American Indians and Alaska Natives;

(iv) Expansion of suicide prevention services, including culture-based programming, to instill and fortify cultural practices as a protective factor;

(v) Expansion of traditional healing services;

(vi) Development of a community health aide program, including a community health aide certification board for the state consistent with 25 U.S.C. Sec. 16161, and support for community health aide services;

(vii) 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;

(viii) 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;

(ix) 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

(x) 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) There shall be a fund in the state treasury known as the Indian health improvement reinvestment account, which shall consist of all moneys appropriated and deposited under this chapter and any moneys appropriated to it by law. In order to maintain effective expenditure and revenue control, the reinvestment account is subject in all respects to chapter 43.88 RCW.

(2) Moneys in the reinvestment account may not be expended for any purpose other than projects, programs, or activities identified in section 4.

(3) Beginning July 1, 2019, the new state savings as defined in section 2(11) of this chapter, less the state's administrative costs as agreed upon by the state and the reinvestment committee, are appropriated and directed for deposit into the reinvestment account. With advice from the advisory council, the authority will develop a report and methodology to identify and track the new state savings.

(4) The authority will 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 43.84.092 and 2017 3rd sp.s. c 25 s 50, 2017 3rd sp.s. c 12 s 12, and 2017 c 290 s 8 are each reenacted and amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the

cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the Alaskan Way viaduct replacement project account, the brownfield redevelopment trust fund account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the Chehalis basin account, the cleanup settlement account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the common school construction fund, the community forest trust account, the connecting Washington account, the county arterial preservation account, the county criminal justice assistance account, the deferred compensation administrative account, the deferred compensation principal

account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the diesel idle reduction account, the drinking water assistance account, the drinking water assistance administrative account, the early learning facilities development account, the early learning facilities revolving account, the Eastern Washington University capital projects account, the Interstate 405 express toll lanes operations account, the education construction fund, the education legacy trust account, the election account, the electric vehicle charging infrastructure account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, (~~the high capacity transportation account,~~) the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety fund, the high occupancy toll lanes operations account, the hospital safety net assessment fund, the Indian health improvement reinvestment account, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the mobile home park relocation fund, the money-purchase retirement savings administrative account, the money-purchase retirement savings principal account, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the multiuse roadway safety account, the municipal criminal justice assistance account, the natural resources deposit account, the oyster reserve land

account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the pollution liability insurance agency underground storage tank revolving account, the public employees' retirement system plan account, the public employees' retirement system combined plan and plan account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the Puget Sound taxpayer accountability account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the sexual assault prevention and response account, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 civil penalties account, the state route number 520 corridor account, the state wildlife account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the toll facility bond retirement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation future funding program account, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the

University of Washington building account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving administration account, the water pollution control revolving fund, the Western Washington University capital projects account, the Yakima integrated plan implementation account, the Yakima integrated plan implementation revenue recovery account, and the Yakima integrated plan implementation taxable bond account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, the state university permanent fund, and the state reclamation revolving account shall be allocated to their respective beneficiary accounts.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury 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 treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

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