

Implementation of HB 1877 in facilities.

Changes to the Involuntary Treatment Act

Purpose

The state's crisis system is significantly overburdened, and strategic partnerships are needed to respond to this critical emergency. Leveraging partnerships between state and Tribal governments is imperative for reducing the human cost of our current behavioral health crisis. [House Bill 1877](#) amended at least ten sections of [RCW 71.05](#), [RCW 71.34](#), [RCW 71.24](#), and [RCW 70.02](#). These amendments intend to improve coordination and recognition with the Indian Behavioral Health System. These changes were made as part of long-standing collaborative efforts to improve crisis services for American Indian/Alaskan Native (AI/AN) individuals in Washington state¹.

This communication provides an update on changes related to the Involuntary Treatment Act included in House Bill (BH) 1877 and other relevant statutes that will impact the work of Evaluation and Treatment (E&T) facilities, Secure Withdrawal Management and Stabilization (SWMS) facilities, psychiatric inpatient hospitals, and approved substance use disorder (SUD) treatment programs providing involuntary treatment services.

Changes due to HB 1877

Medical clearance definition

Under this new language included in 1877, physicians and health care providers that work for a Tribe are able to medically clear a person for referral to a Designated Crisis Responder (DCR) or facility in the same way that other healthcare providers can provide medical clearance. Additionally, this new language clarifies that no medical clearance is required prior to investigation by a DCR when a person is presenting with a crisis in the community. The intent of this language adjustment is to clarify that physicians and health care providers that work for a Tribe are also able to medically clear a person and to prevent DCRs from delaying conducting an ITA investigation within the community. This legislation emphasizes that medical clearance should not serve as a barrier to assessing an individual in crisis.

Reference: [71.05.020](#) and [71.34.020](#) "Medical clearance" means a physician or other health care provider, including an Indian health care provider, has determined that a person is medically stable and ready for referral to the designated crisis responder or facility. For a person presenting in the community, no medical clearance is required prior to investigation by a designated crisis responder.

Tribal correctional facilities

In Washington state, state and county court judges must appropriately consider a person's receipt of mental health services at Tribal correctional facilities, not just state or local correctional facilities. This shift in language

¹ The Tribes have established the Tribal Centric Behavioral Health Advisory Board, formerly known as the Tribal E&T Workgroup, to continue this work. For more information, please visit the AIHC [website](#).

is to ensure that state and county court judges appropriately consider a person's receipt of mental health services at Tribal correctional facilities in addition to state and local correctional facilities.

Reference: 71.05.148 and 71.34.815 Amended section "The person has a history of lack of compliance with treatment for his or her behavioral health disorder that has:

(i) At least twice within the 36 months prior to the filing of the petition been a significant factor in necessitating hospitalization of the person, or the person's receipt of services in a forensic or other mental health unit of a state or tribal correctional facility or local correctional facility, provided that the 36-month period shall be extended by the length of any hospitalization or incarceration of the person that occurred within the 36-month period;

(ii) At least twice within the 36 months prior to the filing of the petition been a significant factor in necessitating emergency medical care or hospitalization for behavioral health-related medical conditions including overdose, infected abscesses, sepsis, endocarditis, or other maladies, or a significant factor in behavior which resulted in the person's incarceration in a state, tribal, or local correctional facility;"

Accompanied by a Traditional Cultural Healer within the place of evaluation

When an AI/AN individual is being evaluated for the need for involuntary treatment, the individual is permitted to be accompanied by a traditional cultural healer² in addition to one or more relatives, friends, an attorney, a personal physician, or other professional or religious advisors.

Reference: RCW 71.05.150 § 11(3) The person shall be permitted to be accompanied by one or more of his or her relatives, friends, an attorney, a personal physician, or other professional or religious advisor or traditional cultural healer to the place of evaluation.

Reference: RCW 71.05.150 § 12(3) The person shall be permitted to be accompanied by one or more of his or her relatives, friends, an attorney, a personal physician, or other professional or religious advisor or traditional cultural healer to the place of evaluation.

Access to treatment by cultural means

When individuals are undergoing involuntary treatment in the state of Washington, they must be allowed to have access to cultural and spiritual treatment in addition to the other proposed treatment. This is in addition to the traditional cultural healer being allowed to accompany an AI/AN individual during an ITA evaluation in a facility, also covered in this bill. This provision is specific to the adult ITA.

Reference: RCW 71.05.217 § 20(1)(m) To not be denied access to treatment by cultural or spiritual means through practices that are in accordance with a tribal or cultural tradition in addition to the treatment otherwise proposed.

Behavioral health facilities accept Tribal court orders

This law requires Tribal court orders for involuntary commitment to be recognized and enforced according to superior court rules governing Tribal court jurisdiction. This guarantees Tribal courts are treated the same as

² Applies to non-emergent per [RCW 71.05.150](#).

state courts by treatment facilities, which will increase AI/AN access to lifesaving services and ensure Tribal jurisdiction.

Reference: RCW 71.05 § 1(2), RCW 71.34 § 2(2) Behavioral health service providers shall accept tribal court orders from tribes located within the state on the same basis as state court orders issued under this chapter.

Reference: RCW 71.34 § 2(2) Behavioral health service providers shall accept tribal court orders from tribes located within the state on the same basis as state court orders issued under this chapter.

Right to intervene in state court

The intent of this language is to ensure that Tribes can stay connected to their Tribal members who are in the court system. Intervening could include an advocate from the Tribe appearing in a state court to help coordinate services; or a Tribal prosecutor appearing in a state court with additional case information. These processes and standards are similar to the Indian Child Welfare Act Court processes.

Reference: RCW 71.05 § 1(1) An attorney representing a tribe has the right to intervene at any point in any court proceeding under this chapter involving a member of the tribe.

Reference: RCW 71.34 § 2(1) An attorney representing a federally recognized Indian Tribe has the right to intervene at any point in any court proceeding under this chapter involving a member of the tribe.

Notice to discharge

Under the new bill language, facilities³ discharging individuals receiving involuntary treatment at their facilities shall⁴ notify the person's Tribe or Indian Healthcare Provider when the discharging entity knows, or has reason to know, that the individual is AI/AN. Indicators that may suggest Tribal affiliation may include, but are not limited to, the following:

- Individuals place of residence or location, such as whether they are on or reside on Tribal lands.
- Whether the individual is currently receiving services from an IHCP. Whether that be their home provider or another IHCP.
- Eligibility for services from a Tribe or IHCP.
- Identify if the individual has or is eligible to receive insurance through the Tribe or Indian Health Service.
- Any self-reported Tribal affiliation. Individuals may identify by mentioning the name of their Tribe, self-identifying as Native or indigenous.
- Any Tribal affiliation or relationship mentioned by family or friends, or paperwork received during the investigation process.

For more information, please refer to this [guidance](#) when there is not a protocol in place and this document on Tribal Involuntary Treatment Notification Requirements and Patient Privacy.

³ "Facilities" includes evaluation and treatment facilities, state hospitals, secure withdrawal management and crisis stabilization facilities, or approved substance use disorder treatment programs providing involuntary treatment services as mentioned in [RCW 71.05.435](#).

⁴ "Shall" expresses a command per [WAC 162-08-017](#).

The purpose of this notification is to honor Tribes as sovereign nations, as they retain the right to self-governance and jurisdiction within their lands. Any notice to discharge an AI/AN must respect these inherent rights, ensuring proper consultation and consent from the Tribal governments to allow the Tribe/IHCP to remain connected to their Tribal member throughout the ITA process and provide culturally appropriate services to their Tribal member's needs after discharge. Facilities would notify the individual's Tribe and IHCP, should contact the individual listed in the Tribal Crisis Coordination Protocols⁵. If one is not in place, they must, at a minimum, find the Tribe's website and contact the Health Director or Tribal law enforcement to assist them with notification. In the future, Tribal Crisis Coordination Protocols and contacts will be able to be found by visiting the [Native Resource Hub website](#). Substance use disorder facilities are required to make an attempt at acquiring a release of information before discharging an individual and notifying their Tribe to comply with House Bill 1877 and 42 CFR Part 2⁶. For additional guidance, go to [Indian Behavioral Health Act SB 6259 implementation](#) | [Washington State Health Care Authority](#).

Reference: RCW 71.05.435 § 1 Whenever a person who is the subject of an involuntary commitment order under this chapter is discharged from an evaluation and treatment facility, state hospital, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program providing involuntary treatment services, the entity discharging the person shall provide notice of the person's discharge, subject to federal laws and regulations, to the designated crisis responder office responsible for the initial commitment, which may be a federally recognized Indian tribe or other Indian health care provider if the designated crisis responder is appointed by the authority, and the designated crisis responder office that serves the county in which the person is expected to reside or the tribal contact listed in the authority's tribal crisis coordination plan if the entity discharging the person knows, or has reason to know, that the person is an American Indian or Alaska Native who receives medical or behavioral health services from a tribe within this state.

Reference RCW 71.05.435 § 4 A facility providing substance use disorder services must attempt to obtain a release of information before discharge to meet the notification requirements of subsection (1) of this section.

Allowable release of information to correctional facilities

New 1877 bill language ensures that Tribal correctional facilities have access to mental health records on the same basis as state and local correctional facilities. Implementation of this language may involve the HCA revising DCR protocols and providing education to make others aware of this change.

Reference RCW 70.02.260 The information subject to release under subsection (1) of this section must be released to law enforcement officers, personnel of a county or city or tribal jail, tribal detention or tribal holding facilities, designated mental health professionals or designated crisis responders, as appropriate, public health officers, therapeutic court personnel as defined in RCW 71.05.020, or personnel of the department of corrections, including the indeterminate sentence review board and personnel assigned to perform

⁵ Crisis Coordination Protocols are a set of procedures outlined by individual Tribes to guide how non-Tribal crisis care organizations work with Tribal authorities, members, and IHCPs to deliver crisis services on Tribal lands.

⁶ Information obtained during an evaluation of a Part 2 program cannot be used to investigate or prosecute patients without a written consent of the patients or a court order that meets Part 2 requirements. Part 2 programs include facilities that are federally-assisted to provide SUD services. [Fact Sheet 42 CFR Part 2 Final Rule](#) | [HHS.gov](#)

board- related duties, when such information is requested during the course of business and for the purpose of carrying out the responsibilities of the requesting person's office.

References

HB 1877 Indian Behavioral Health: [1877-S2.SL.pdf](#)

Chapter 71.05 RCW: [Chapter 71.05 RCW: MENTAL ILLNESS \(wa.gov\)](#)

U.S. Department of Health and Human Services: [Fact Sheet 42 CFR Part 2 Final Rule | HHS.gov](#)

American Indian Health Commission: [Tribal Behavioral Health Events and Meetings | AIHC](#)

Washington State Health Care Authority: [Protocols for Designated Crisis Responders \(DCRs\)](#)

Native Resource Hub: [Native Resource Hub](#)

Governor's Office of Indian Affairs Tribal Directory: [Tribal Directory | GOIA](#)