ADULT BEHAVIORAL HEALTH SYSTEM TASK FORCE

The Sauk-Suiattle Indian Tribe is increasingly concerned about the onerous requirements promulgated under 2SSB 5732 (2013) that effectively contravenes or threatens the tribe's ability to retain its sovereign authority. (See *United States v. Wheeler*, 435 U.S. 313, 323 (1978).

In relevant part, 2SSB 5732 requires:

> **"The systems responsible for financing, administration, and delivery of publicly funded mental health and chemical dependency 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, and promising practices."[1] RCW 71.24.025.**

Despite all the efforts of various stakeholders and other contributors to these discussions about the overall implementation of *"**tribal-centric**"* (*special emphasis added*) delivery of chemical dependency/mental health services and recommendations for paying (or financing) for these schemes; the overall emphasis adduced in "Opportunities for Change: *Improving the Health of American Indians/Alaska Natives in Washington State* – American Indian Health Care Delivery – April 2010" appears to fade into oblivion.[2]

Namely, on page 50 of Opportunities for Change…it states in relevant part:

> **"The 2006 American Indian Health Commission position paper also stated: 'While the involvement of Tribes and inclusion of Tribal priorities in the state's plan is an encouraging first step, the state must continue to work with Tribes on a government-to-government basis to ensure that the recommendations from Tribal-specific chapter are addressed in Washington's mental health transformation process.' The state's mental health transformation plan must include a consultation process with the 29 Tribes in Washington to address specific**

[1] Miller, M. Fumia, D., & Kay, N. (2014). *Inventory of evidence-based, research-based, and promising practices prevention and intervention services for adult behavioral health*. (Doc No. 14-05-4101). Olympia: Washington State Institute for Public Policy.

[2] Scott, Marilyn, Chairwoman, American Indian Health Commission and Mary C. Selecky, Secretary, Washington State Department of Health (2010). *Opportunities for Change*: Improving the Health of American Indians/Alaska Natives in Washington State 2010-2013 American Indian Health Care Delivery Plan -

recommendations that were made in the initial survey across the state."

Of paramount importance to the Sauk-Suiattle Indian Tribe, however, is that the current way of accessing or financing chemical dependency or mental health services –perpetuates a false dichotomy (i.e., *preserving tribal sovereignty versus accessing financial resources through contractual means, etc.,)* from the state of Washington or its local designees to pay for vital assessment or treatment services through the current Regional Services Network (RSN)[3] resulting in the back-door lowering of tribal *sovereign shields*.[4]

Sadly, Sauk-Suiattle Indian Tribe is gravely concern that it will be difficult to navigate through *2SSB 5732* mandated changes: that timely and cost-effective access to chemical dependency and mental health services on behalf of its tribal members (other American Indians) and citizens of Snohomish and Skagit counties –whom have become accustomed to receiving high-quality services through the Sauk-Suiattle Indian at little or no cost; will result in overburdening this very tiny tribe. The disparities between the ever increasing caseloads of the tribe and the ever-shifting resource allocations only serves to punish the tribe for generously serving the needs of its peoples and also others not affiliated with daily reservation life.

Of note: In its (recent) unanimous decision, the Washington State Supreme Court confirms the Sauk-Suiattle Indian Tribe's fear that the funding mechanisms for treating severely impacted clients/patients (prospective) access to mental health or chemical dependency treatments through the mandates of 2SSB 5732 (2013) may only cause to delay treatments for the most compromised members of its community. Where is the "**12**"[5] man of mental health?

Specifically, on August 7, 2014,[6] the Supreme Court ruled that Washington State's involuntary treatment act (ITA), chapter 71.05 RCW, process that resulted in "***psychiatric boarding***" of patients was "unlawful." In reaching its decision, the Court in-part relied on the limited-and- credible testimony of David Reed[7] from the Department of Social and Health Services –Division of Behavioral Health and Recovery. Namely, the Court found that Mr. Reed, '*…testified consistently… Reed also testified that the use of single bed certifications had 'within*

[3] Behavioral Health Organization may be the successor financing agency.
[4] Although it is settled law that tribes enjoy 'common-law immunity from suit traditionally enjoyed by sovereign powers' (*see,* e.g., Michigan v. Bay Mills Indian Community et al., 134 S.Ct.2024 (2014))–tribe is bound contractually to the State of Washington for its service commitments in exchange for very little financial remuneration. Note: The Supreme Court of the United States, however, still recognized that: "Michigan must therefore resort to other mechanisms, including legal actions against the responsible individuals, to resolve this dispute.
[5] Go "Seahawks."
[6] *In re the Detention of D.W.., et al.,* No. 90110-4.
[7] Now its Acting Director

the past seven years....pretty much exploded and is continuing to increase.' (**Special emphasis added**).

The Sauk-Suiattle Indian Tribe suggest that if the Washington State Supreme Court can reach a finding that the State of Washington was inadequately funding its ITA-treatment beds…what resources exist to fully fund the chemical dependency and mental health treatment (out-patient and in-patient) programs for its tribal members? Therefore, the Sauk-Suiattle Indian Tribe strongly recommends that the ADULT BEHAVIORAL HEALTH SYSTEM TASK FORCE consider the below recommendations for ensuring adequate access and funding of chemical dependency and mental health treatment for its tribal and other community members as as follows:

1. **DESIGNATED EXPERT WITNESS**[8]: All 29 federally recognized tribes within the state of Washington should have one designated Mental/Chemical Dependency Expert Witness or Professional present for all Native Americans/Alaska Natives subject to an ITA-process –either in tribal or state courts.

2. **OMBUDS(MAN) FOR TRIBES:** Establishment of Office of American Indians/Alaska Natives Ombuds(man) to protect clients/consumers from harmful agency action or inaction, and to make agency (i.e., state, county, or local) officials and state policy makers aware of system-wide issues in the protection of Indians/Alaska Natives interfacing with Behavioral Health Organizations or the Regional Service Networks.

3. **RACIAL DISPROPORTIONALITY**:[9] Establish a statewide Racial Disproportionality Advisory Committee to study the impacts of chronic underfunding of chemical dependency/mental health treatment for all 29 federally recognized tribes in the State of Washington and develop effective strategies for combating this disabling condition that harms tribal children, youth, and their families.

4. **FUNDING**: Streamline access points for both treatment and payment processes –so as to limit the disproportionate burdens for tribes –in order to reduce administrative and other uncovered cost for implementing tribal-centric chemical dependency and mental health services. Another way of examining this chronic underfunding issue –maybe the State of Washington can research how mortgage companies and banks undertake the process of funding home ownership. After all it is very clear that some clients do in fact exit mental health treatment in excess of thousands –if not hundreds of thousands of dollars (i.e., revolving doors into jails, prisons, psychiatric facilities, the streets, etc.,).

[8] This should be a paid professional coming directly from tribe or tribally approved provider.
[9] 29 federally recognized tribes in the State of Washington should be provided technical assistance and improve upon data collections for tracking "suicides" on or off tribal lands.

A large cottage industry as developed from top, middle, bottom and underground – funneling billions of dollars through the broken chemical dependency and mental health systems.

5. **2006 WASHINGTON MENTAL HEALTH TRANSFORMATION PLAN: Phase I**: See *Opportunities for Change…*page 50 for additional guide toward implementation of Phase I plan already in progress.

6. **TRIBAL PROVIDER CONTRACTS**: That tribes be permitted to enter into provider contracts –that is inclusive of the cultural traditions and practices (holistic) approaches to healing and that the evidenced-based requirements –be reevaluated in-light of the diversity of all federally recognized tribes within Washington's boundaries. It should be no longer acceptable for non-tribal service providers to call their treatment programs as meeting the sensitive and cultural needs of tribal clients/patients throughout the State of Washington –satisfying the "***cultural component***" definition –where "healing terms" used in Indian Country is bantered around and needlessly appropriated for financial gain.

7. **ELIMINATING BARRIERS AND UNREASONABLE DELAYS:** Consider if Tribes can participate in both direct purchasing and providing chemical dependency and mental health treatments –funneling not only timely and proper access toward purchasing of managed care contracts; but more importantly eliminating barriers to access at all levels of the financing and delivery systems of care.

8. **NATIVE AMERICAN ITA PROFESSIONALS**: It should be a policy of the state of Washington to increase the numbers of paid professionals through Indian Country –to built capacities and training expertise to include Indian ITA professionals –taking into consideration that the ITA process as utilized today –may not necessarily reflect the culture of tribal communities.[10]

9. **LICENSING/CERTIFICATION**:[11] It should be the policy of the State of Washington to provide technical support at all levels of the financing/service delivery systems –and to facilitate the development of expertise, recruitment, and paying for recruitment, licensing, and certification in order to recruit top-flight professionals within Indian Country in Washington.

Respectfully submitted by:

[10] It should be understood that most Native Americans subject to ITA-processes in Washington State are further removed when they are confined to the "four walls" of Western State Hospital --sometimes separated by concrete, steel, and bars as oppose to being treated in their natural tribal lands.
[11] Building tribal administrative capabilities.

HONORABLE RONDA METCALF
Secretary and General Manager
SAUK-SUIATTLE INDIAN TRIBE

RAJU A.T. DAHLSTROM, MSW
Director
Indian Child Welfare Department
SAUK-SUIATTLE INDIAN TRIBE