Washington State Department of Commerce

Behavioral Health Model Ordinance Project – Local Government Focus Group Summary

LOCAL GOVERNMENT DIVISION

Overview

The Department of Commerce is tasked with developing a model ordinance for cities and counties to utilize for siting community-based behavioral health facilities. In support of this, BERK and Commerce, in partnership with the Washington Association of Counties and the Association of Washington Cities, held four focus group discussions with staff representatives and elected officials, to understand local experiences and perspectives about these issues, including processes and requirements, challenges, opportunities, and ideas on what should be included in a model ordinance. The four focus groups were held on:

- November 17 – City and County Elected Officials
- November 19 – City and County Staff
- November 20 – City and County Elected Officials
- November 23 – City and County Staff

Table of Contents

Commerce Behavioral Health Model Ordinance Project – Local Government Focus Group Summary

Discussion Summary

General Observations and Questions

- Confusion among locals around State's vision and goals for something that is handled locally.
- The State needs to provide a full continuum of care. This has not been available so people are leery of what happens when users of behavioral health facilities exit with continuing needs that cannot be met in the community. Stable living situations are a critical factor.
- Cities need to be involved in all parts of the process. Community outreach and awareness are necessary even if no regulatory changes are required. For example, the City of Everett learned of an Enhanced Services Facility (ESF) in a State press release.
- Distinction between behavioral health services and services for people experiencing homelessness is not clear and causes confusion.
- Need for clear facility categories at the front counter (permitting) based on plain language rather than on funding or regulation
- Local governments would like clarity around decisions about who gets a space in a facility. Will community-based facilities serve the local community, or will it be a regional or statewide facility?
- Some commented that the mental health/behavioral health system is underfunded and not meeting demand for services leaving many people without services.
- Behavioral health staffing is a challenge in small, rural communities which could make siting facilities in those communities difficult.

Local Impacts

- Local governments feel that the State has not fully considered the impacts (and costs) to them of the policy and program.
- Communities take on costs associated with facilities (emergency services and police calls, for example) and are serving individuals from the region. One participant noted that the incentives to participate in facilities development are not there.
    - Lakewood police costs are offset by Western State Hospital, as one example

    - Others noted that Fire and EMS often raise concerns about larger facilities
- Some participants proposed a fair share approach as this is a statewide initiative, but facilities will not get sited in every community and there are associated costs.
- Some participants noted they have more concerns about operations (staffing ratios, provider competency, site maintenance) than land use issues.

Definitions, Including Essential Public Facilities

- Many participants support the idea of a model ordinance.
- DSHS changes processes and treatment models frequently. Locally it is difficult for land use regulation to keep up with changes in absence of clear guidance on facility and operating characteristics.
- State agency definitions change often so don't want to be too specific with definitions in the ordinance.
- Varying approaches to Essential Public Facilities (EPF) process. Many jurisdictions believe it's not the desired approach, and many are using it on a case by case basis. Others use it with much more frequency.
    - EPF assessment is made for each use and why or why not the determination was made is documented in Spokane County. Thurston County, Kent, and cities in Skagit also mentioned using the EPF process.

Definitions in Existing Code:

- Adult Family Homes
- Assisted Living
- Community Residential Facilities
- Congregate Care
- Crisis Diversion Center
- Enhanced Services Facilities
- Essential Public Facilities definitions in Countywide Planning Policies or City Ordinances often name Mental Health Facilities
- Evaluation and Treatment
- Group Homes
- Homeless/Transitional Shelters
- Medical Care Facility
- Residential Care Facilities
- Residential Facility with health care
- Service Care

Land Use Regulations

- Some Comprehensive Plans specifically support affordable housing or specific populations
    - Health and Human Service element of one County Comprehensive Plan references regional efforts at facility development and planning
- Conditional permits are common as they allow jurisdictions to determine if the use is appropriate in the location, and as necessary require special conditions on the development and use of the land.
- Some jurisdictions consider behavioral health facilities "unclassified use" or a social service based on how the facility operates.
- Lakewood – 20 different codes for special needs housing – conditional permits
- Pierce County permits behavioral health facilities only in commercial and urban mixed-use zones
- Lacey's form-based code allowed siting of an 80-bed mental health hospital in a mixed-use area
- ESF special conditions are generally in line with direction from DSHS to provide a second level of accountability (e.g. around community safety).
- City of Spokane considers behavioral health to be Community Services. Allowed by-right except in lower-density residential zones, where they are conditional uses, and in Heavy Industrial areas, where they are prohibited. May add Light Industrial to prohibited areas because as with Heavy Industrial, land is scarce and needed for manufacturing and employment.

Decision Thresholds

How would your jurisdiction think about a 16-bed residential facility with a few onsite treatment rooms and common kitchen? Some noted the facility is considered through a medical treatment lens, then assessed as housing. Examples included:

- If medically necessary treatment is provided on site, it's a medical facility, otherwise it is group living.
- Medicaid substance use treatment facilities are typically limited to 21 days, so would not be considered housing by some jurisdictions.
- If not medical, it may be group living depending on whether residents pay one month's rent at a time.
- Some commercial zones don't allow first floor residential – 16-bed facility is likely to be one floor.
- Jurisdictions consider whether the facility is a destination for treatment or more akin to other long-term residential care facilities, such as nursing homes or assisted living.

Some jurisdictions have used an "unclassified use" process to determine the appropriate location for facilities.

Community Concerns

Stigma and Fear

- Stigma remains related to the population receiving behavioral health services. Even if the code makes no mention of the populations served, the community wants to know who is being served and what their characteristics are.
- Behavioral Health results in people thinking of a worst-case scenario which is why communication is so important and takes more time than you think. Once a facility is up and running, there are rarely complaints from neighbors.
- Secure or locked facilities and referrals from the state hospitals increase fear.
- Proximity to neighborhoods or schools – even small facilities (up to 6) in residential neighborhoods are a no-go politically.

Impacts and Competing Priorities

- Impact on property values (many assume facilities will decrease values)
- Traffic, noise, light and glare, infrastructure (sewer, water, power), public safety (police, fire, EMS)
- Loitering has been solved by some with shuttles
- Competing uses for limited land – economic development (revenue generation), manufacturing, parks, housing, etc.
- Job creation rationale often does not resonate with community. Community focus is more frequently on public safety and other impacts (perceived or real).

Other Concerns

Project Feasibility

- Full funding takes time to assemble requiring a restart to the process if permits expire.
- Finding suitable and affordable sites is hard, especially if trying to locate near transit and other services. There is no public transportation in many areas of the state.
- Some requirements add costs. For example, landscape and sidewalk improvements, or historic preservation requirements related to windows or other elements.
- Staffing and resident parking requirements are a community concern and may add project costs, especially if the facility is "over-parked" for resident needs.
- Complexity of regulations, color of money, and lack of coordination across agencies are all challenging. Anything that adds time, adds to the project cost.

Fair Share and Equity

- Need for equitable distribution throughout neighborhoods and region while still providing appropriate level of care to patients.
- Facility size and equitable distribution not just within the City, but also County and State.
- Questions around where populations will eventually relocate and who will be responsible for continuing to serve their needs. This points to a need for referral criteria.
- Facilities tend to be sited where land is cheapest which raises equity issues of service delivery and distribution of impacts.
- Some are concerned that less affluent neighborhoods will be targeted for siting.

Additional Feedback

Additional feedback on the Focus Group summary content was offered in early January 2021 by focus group participants and their colleagues. Feedback included:

- Be mindful of regulations that incentivize avoidance/circumvention of permitting and siting rules. Jurisdictions often get complaints about unpermitted group homes and residential care facilities, so it's important to follow proper land use regulations and permitting requirements.
- Jurisdictions may already allow these uses without too much restriction; as such, please do not require a new process in cases where it works well under existing regulations. Suggestion to create a baseline expectation, but if an area already meets or exceeds those requirements, don't require them to create a new code, standard, or process.

Ideas That Might Help

Communication and Education

- Require early and frequent communication with the community (including education campaigns about the societal need and benefits of these facilities).
- Good Neighbor Plans led by providers can help. Could a universal template be created?
- A well-defined public engagement process that includes community stakeholders, neighbors, and experts in the field of behavioral health, including state agency representatives.
- Create FAQs and provide contact info for service provider so that issues, concerns, and questions can be addressed in real time.
- Have provider facilitate discussions to find solutions around how we live together; recently, when City stepped back, businesses stepped in and offered solutions.
- Providers also need support from jurisdictions as land use regulations do not make sense to the provider community and are difficult to interpret quickly.

Land Use and Planning Regulations

- Create specific design and performance standards so the public can better understand what can be proposed, where it can be proposed, and how impacts will be mitigated.
- Would form based codes help with siting?
- Creation of hospital or medical districts sets a long-term vision of where facilities are best located and might help with community expectations and acceptance.
- If there is supposed to be parity, jurisdictions should examine how medical facilities are treated differently from behavioral health.

City/County Process

- Engage with and between the Planning Commission and other volunteer boards. They are community residents and could help with education and support.
- Establish operations expectations and management. This needs to include coordination with the local jurisdiction and will most likely require response resources.
- Work across departments to ensure everybody has input.
- Stay the course in the face of calls and complaints before a facility opens. Once it's open you often hear nothing.

Recommendations for the Ordinance and Guidance

Following the focus groups, we have developed seven recommendations for the Ordinance and Regulatory Guidance. They are listed below and then presented with more context as to where they will fit within the Ordinance.

1. Due to the wide range of impacts within the continuum of behavioral health facilities, the ordinance should focus on Enhanced Services Facilities (ESFs) and Intensive Behavioral Health Facilities to be useful to local governments.

2. The ordinance should start with the statutory definition of behavioral health services, followed by the project definition of *community-based* behavioral health services.

3. The ordinance should define the continuum of behavioral health facilities in terms of requirements related to square footage, land use, length of stay, level of security, and other facility needs (access to other social services, transit, etc.).

4. The ordinance should provide examples of definitions and existing codes that communities use now to accommodate residential behavioral health facilities (functional equivalents).

5. The ordinance should propose code language that addresses known impacts (parking, outdoor recreation space) of ESFs and Intensive Behavioral Health Facilities.

6. The regulatory guidance should provide a decision-tree for the use of existing code and regulations and the Essential Public Facilities law to site these facilities.

7. In addition to the model ordinance, regulatory guidance, communications, data, and programs are needed to further balance the needs of communities, facility residents, and staff.

Principles

The project team and the Advisory Committee developed the following principles to guide the model ordinance and regulatory guidance drafting:

- Provide local governments and tribal communities the opportunity to provide meaningful input.
- Utilize local government and tribal community inputs to develop practical guidance and language that can be readily adopted by local governments to meet different communities' needs.
- Allow behavioral health facilities to be sited in community areas with appropriate conditions for the services being provided.
- Apply regulatory land use frameworks in the same manner for behavioral health facilities as for other facilities with similar scale and land use impacts.
- Apply permitting and entitlement processes appropriate to the scale of the facility and location that is efficient, predictable and informed.
- Increase access to behavioral health services and community amenities for individuals living with behavioral health conditions or disabilities.

Ordinance Framework

- Statement of Purpose
- Findings
- Applicability
- Definitions
- Substantive Provisions

Statement of Purpose

This work is based in part on the goals of the Community Behavioral Health Services Act, 71.24 RCW, and the new statewide Integrated Managed Care Policy. Specifically, these goals are to:

- Develop a community-based behavioral health system to assist people experiencing mental illness or a substance use disorder to retain a respected and productive position in the community.
- Encourage the development of regional behavioral health services with adequate local flexibility to assure eligible people in need of care access to the least-restrictive treatment alternative appropriate to their needs, and the availability of treatment components to assure continuity of care.
- Coordinate physical health, mental health, and substance use disorder treatment services to help provide whole-person care.

Applicability

Our focus remains on developing guidance and a model ordinance to help counties and cities facilitate siting of behavioral health facilities.

1. Due to the wide range of impacts within the continuum of behavioral health facilities, the ordinance should focus on Enhanced Services Facilities (ESFs) and Intensive Behavioral Health Facilities to be useful to local governments.

These facilities fall under the category of residential treatment and are larger than a single-family home, but not so large that they can't be sited in or near residential neighborhoods. These are also facility types that frequently do not have a functional equivalent in existing code.

Definitions

2. The ordinance should start with the statutory definition of behavioral health services, followed by the project definition of *community-based* behavioral health services.

- Start with the broad, statutory definition: The Community Behavioral Health Services Act (71.24 RCW) defines "**Behavioral health services**" as: *Mental health services as described in this chapter and chapter 71.36 RCW ["Coordination of Children's Mental Health Services"] and substance use disorder treatment services as described in this chapter that, depending on the type of service, are provided by licensed or certified behavioral health agencies, behavioral health providers, or integrated into other health care providers. RCW 71.24.025(9).*
- Follow that with the project definition of community-based behavioral health services:
    - Provide access to the least-restrictive alternatives possible for people in need of care, as opposed to hospitals, jails or prisons.

- May be publicly or privately funded or supported through a combination of public and private resources.
- Licensed at the provider or facility level by a state agency to provide for the prevention, treatment of, and/or recovery from any or all of the following conditions: substance use, mental health, or what is commonly co-occurring disorders or illnesses that require a combination of counseling and medication, or other continuums of care.
- Aid individuals living with mild, moderate, or severe behavioral health conditions across all age groups and ability levels, including individuals living with a physical, mental or developmental disability.

3. The ordinance should define the continuum of behavioral health facilities in terms of requirements related to square footage, land use, length of stay, level of security, and other facility needs (access to other social services, transit, etc.).

4. The ordinance should provide examples of definitions and existing codes that communities use now to accommodate residential behavioral health facilities (functional equivalents).

Substantive Provisions

5. The ordinance should propose code language that addresses known impacts (parking, outdoor recreation space) of ESFs and Intensive Behavioral Health Facilities.

Local Ordinance and Guidance Approach

6. The regulatory guidance should provide a decision-tree for the use of existing code and regulations and the Essential Public Facilities law to site these facilities.

- Use of EPF sends a message that there are negative externalities. Behavioral Health services (and other EPFs) should follow a jurisdiction's generic EPF process **only** if the use is not specifically addressed, or there is not a functional equivalent, elsewhere in the code.

7. In addition to the model ordinance, regulatory guidance, communications, data, and programs are needed to further balance the needs of communities, facility residents, and staff.

- For example, recommendations for ESFs in moderate density residential and high-density residential areas with access to amenities, but not industrial as that land is limited and has higher economic value for its intended purpose.
- May want to include a primary and secondary use determination. For example, we are talking about facilities that specifically address behavioral health needs and also provide housing.
- While land use code does not need to address client characteristics, communities care about this and it can't be ignored. Rather, lean into it and anticipate the questions and concerns through outreach and education. Communication and education on areas of concern are key and providers and behavioral health experts are often better suited to this than local government staff.