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SENATE BILL 5286

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State of Washington

53rd Legislature

1993 Regular Session

By Senators Niemi and Deccio

Read first time 01/21/93. Referred to Committee on Health & Human Services.

1 AN ACT Relating to nursing homes; and amending RCW 74.46.020 and  
2 74.46.380.

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

4 **Sec. 1.** RCW 74.46.020 and 1991 sp.s. c 8 s 11 are each amended to  
5 read as follows:

6 Unless the context clearly requires otherwise, the definitions in  
7 this section apply throughout this chapter.

8 (1) "Accrual method of accounting" means a method of accounting in  
9 which revenues are reported in the period when they are earned,  
10 regardless of when they are collected, and expenses are reported in the  
11 period in which they are incurred, regardless of when they are paid.

12 (2) "Ancillary care" means those services required by the  
13 individual, comprehensive plan of care provided by qualified  
14 therapists.

15 (3) "Appraisal" means the process of estimating the fair market  
16 value or reconstructing the historical cost of an asset acquired in a  
17 past period as performed by a professionally designated real estate  
18 appraiser with no pecuniary interest in the property to be appraised.  
19 It includes a systematic, analytic determination and the recording and

1 analyzing of property facts, rights, investments, and values based on  
2 a personal inspection and inventory of the property.

3 (4) "Arm's-length transaction" means a transaction resulting from  
4 good-faith bargaining between a buyer and seller who are not related  
5 organizations and have adverse positions in the market place. Sales or  
6 exchanges of nursing home facilities among two or more parties in which  
7 all parties subsequently continue to own one or more of the facilities  
8 involved in the transactions shall not be considered as arm's-length  
9 transactions for purposes of this chapter. Sale of a nursing home  
10 facility which is subsequently leased back to the seller within five  
11 years of the date of sale shall not be considered as an arm's-length  
12 transaction for purposes of this chapter.

13 (5) "Assets" means economic resources of the contractor, recognized  
14 and measured in conformity with generally accepted accounting  
15 principles.

16 (6) "Bad debts" means amounts considered to be uncollectable from  
17 accounts and notes receivable.

18 (7) "Beds" means the number of set-up beds in the facility, not to  
19 exceed the number of licensed beds.

20 (8) "Beneficial owner" means:

21 (a) Any person who, directly or indirectly, through any contract,  
22 arrangement, understanding, relationship, or otherwise has or shares:

23 (i) Voting power which includes the power to vote, or to direct the  
24 voting of such ownership interest; and/or

25 (ii) Investment power which includes the power to dispose, or to  
26 direct the disposition of such ownership interest;

27 (b) Any person who, directly or indirectly, creates or uses a  
28 trust, proxy, power of attorney, pooling arrangement, or any other  
29 contract, arrangement, or device with the purpose or effect of  
30 divesting himself of beneficial ownership of an ownership interest or  
31 preventing the vesting of such beneficial ownership as part of a plan  
32 or scheme to evade the reporting requirements of this chapter;

33 (c) Any person who, subject to subparagraph (b) of this subsection,  
34 has the right to acquire beneficial ownership of such ownership  
35 interest within sixty days, including but not limited to any right to  
36 acquire:

37 (i) Through the exercise of any option, warrant, or right;

38 (ii) Through the conversion of an ownership interest;

1 (iii) Pursuant to the power to revoke a trust, discretionary  
2 account, or similar arrangement; or

3 (iv) Pursuant to the automatic termination of a trust,  
4 discretionary account, or similar arrangement;  
5 except that, any person who acquires an ownership interest or power  
6 specified in subparagraphs (i), (ii), or (iii) of this subparagraph (c)  
7 with the purpose or effect of changing or influencing the control of  
8 the contractor, or in connection with or as a participant in any  
9 transaction having such purpose or effect, immediately upon such  
10 acquisition shall be deemed to be the beneficial owner of the ownership  
11 interest which may be acquired through the exercise or conversion of  
12 such ownership interest or power;

13 (d) Any person who in the ordinary course of business is a pledgee  
14 of ownership interest under a written pledge agreement shall not be  
15 deemed to be the beneficial owner of such pledged ownership interest  
16 until the pledgee has taken all formal steps necessary which are  
17 required to declare a default and determines that the power to vote or  
18 to direct the vote or to dispose or to direct the disposition of such  
19 pledged ownership interest will be exercised; except that:

20 (i) The pledgee agreement is bona fide and was not entered into  
21 with the purpose nor with the effect of changing or influencing the  
22 control of the contractor, nor in connection with any transaction  
23 having such purpose or effect, including persons meeting the conditions  
24 set forth in subparagraph (b) of this subsection; and

25 (ii) The pledgee agreement, prior to default, does not grant to the  
26 pledgee:

27 (A) The power to vote or to direct the vote of the pledged  
28 ownership interest; or

29 (B) The power to dispose or direct the disposition of the pledged  
30 ownership interest, other than the grant of such power(s) pursuant to  
31 a pledge agreement under which credit is extended and in which the  
32 pledgee is a broker or dealer.

33 (9) "Capitalization" means the recording of an expenditure as an  
34 asset.

35 (10) "Contractor" means an entity which contracts with the  
36 department to provide services to medical care recipients in a facility  
37 and which entity is responsible for operational decisions.

38 (11) "Department" means the department of social and health  
39 services (DSHS) and its employees.

1 (12) "Depreciation" means the systematic distribution of the cost  
2 or other basis of tangible assets, less salvage, over the estimated  
3 useful life of the assets.

4 (13) "Direct care supplies" means medical, pharmaceutical, and  
5 other supplies required for the direct nursing and ancillary care of  
6 medical care recipients.

7 (14) "Entity" means an individual, partnership, corporation, or any  
8 other association of individuals capable of entering enforceable  
9 contracts.

10 (15) "Equity" means the net book value of all tangible and  
11 intangible assets less the recorded value of all liabilities, as  
12 recognized and measured in conformity with generally accepted  
13 accounting principles.

14 (16) "Facility" means a nursing home licensed in accordance with  
15 chapter 18.51 RCW, excepting nursing homes certified as institutions  
16 for mental diseases, or that portion of a hospital licensed in  
17 accordance with chapter 70.41 RCW which operates as a nursing home.

18 (17) "Fair market value" means the replacement cost of an asset  
19 less observed physical depreciation on the date for which the market  
20 value is being determined.

21 (18) "Financial statements" means statements prepared and presented  
22 in conformity with generally accepted accounting principles including,  
23 but not limited to, balance sheet, statement of operations, statement  
24 of changes in financial position, and related notes.

25 ~~(19) ("Gain on sale" means the difference between the total net  
26 book value of nursing home assets, including but not limited to land,  
27 building and equipment, and the total sales price of all such assets.~~

28 ~~(20))~~ "Generally accepted accounting principles" means accounting  
29 principles approved by the financial accounting standards board (FASB).

30 ~~((21))~~ (20) "Generally accepted auditing standards" means  
31 auditing standards approved by the American institute of certified  
32 public accountants (AICPA).

33 ~~((22))~~ (21) "Goodwill" means the excess of the price paid for a  
34 business over the fair market value of all other identifiable,  
35 tangible, and intangible assets acquired.

36 ~~((23))~~ (22) "Historical cost" means the actual cost incurred in  
37 acquiring and preparing an asset for use, including feasibility  
38 studies, architect's fees, and engineering studies.

1       (~~(24)~~) (23) "Imprest fund" means a fund which is regularly  
2 replenished in exactly the amount expended from it.

3       (~~(25)~~) (24) "Joint facility costs" means any costs which  
4 represent resources which benefit more than one facility, or one  
5 facility and any other entity.

6       (~~(26)~~) (25) "Lease agreement" means a contract between two  
7 parties for the possession and use of real or personal property or  
8 assets for a specified period of time in exchange for specified  
9 periodic payments. Elimination (due to any cause other than death or  
10 divorce) or addition of any party to the contract, expiration, or  
11 modification of any lease term in effect on January 1, 1980, or  
12 termination of the lease by either party by any means shall constitute  
13 a termination of the lease agreement. An extension or renewal of a  
14 lease agreement, whether or not pursuant to a renewal provision in the  
15 lease agreement, shall be considered a new lease agreement. A strictly  
16 formal change in the lease agreement which modifies the method,  
17 frequency, or manner in which the lease payments are made, but does not  
18 increase the total lease payment obligation of the lessee, shall not be  
19 considered modification of a lease term.

20       (~~(27)~~) (26) "Medical care program" means medical assistance  
21 provided under RCW 74.09.500 or authorized state medical care services.

22       (~~(28)~~) (27) "Medical care recipient" or "recipient" means an  
23 individual determined eligible by the department for the services  
24 provided in chapter 74.09 RCW.

25       (~~(29)~~) (28) "Net book value" means the historical cost of an  
26 asset less accumulated depreciation.

27       (~~(30)~~) (29) "Net invested funds" means the net book value of  
28 tangible fixed assets employed by a contractor to provide services  
29 under the medical care program, including land, buildings, and  
30 equipment as recognized and measured in conformity with generally  
31 accepted accounting principles, plus an allowance for working capital  
32 which shall be five percent of the allowable costs of each contractor  
33 for the previous calendar year.

34       (~~(31)~~) (30) "Operating lease" means a lease under which rental or  
35 lease expenses are included in current expenses in accordance with  
36 generally accepted accounting principles.

37       (~~(32)~~) (31) "Owner" means a sole proprietor, general or limited  
38 partners, and beneficial interest holders of five percent or more of a  
39 corporation's outstanding stock.

1       (~~(33)~~) (32) "Ownership interest" means all interests beneficially  
2 owned by a person, calculated in the aggregate, regardless of the form  
3 which such beneficial ownership takes.

4       (~~(34)~~) (33) "Patient day" or "client day" means a calendar day of  
5 care which will include the day of admission and exclude the day of  
6 discharge; except that, when admission and discharge occur on the same  
7 day, one day of care shall be deemed to exist.

8       (~~(35)~~) (34) "Professionally designated real estate appraiser"  
9 means an individual who is regularly engaged in the business of  
10 providing real estate valuation services for a fee, and who is deemed  
11 qualified by a nationally recognized real estate appraisal educational  
12 organization on the basis of extensive practical appraisal experience,  
13 including the writing of real estate valuation reports as well as the  
14 passing of written examinations on valuation practice and theory, and  
15 who by virtue of membership in such organization is required to  
16 subscribe and adhere to certain standards of professional practice as  
17 such organization prescribes.

18       (~~(36)~~) (35) "Qualified therapist" means:

19       (a) An activities specialist who has specialized education,  
20 training, or experience as specified by the department;

21       (b) An audiologist who is eligible for a certificate of clinical  
22 competence in audiology or who has the equivalent education and  
23 clinical experience;

24       (c) A mental health professional as defined by chapter 71.05 RCW;

25       (d) A mental retardation professional who is either a qualified  
26 therapist or a therapist approved by the department who has had  
27 specialized training or one year's experience in treating or working  
28 with the mentally retarded or developmentally disabled;

29       (e) A social worker who is a graduate of a school of social work;

30       (f) A speech pathologist who is eligible for a certificate of  
31 clinical competence in speech pathology or who has the equivalent  
32 education and clinical experience;

33       (g) A physical therapist as defined by chapter 18.74 RCW; and

34       (h) An occupational therapist who is a graduate of a program in  
35 occupational therapy, or who has the equivalent of such education or  
36 training.

37       (~~(37)~~) (36) "Questioned costs" means those costs which have been  
38 determined in accordance with generally accepted accounting principles  
39 but which may constitute disallowed costs or departures from the

1 provisions of this chapter or rules and regulations adopted by the  
2 department.

3 ~~((38))~~ (37) "Records" means those data supporting all financial  
4 statements and cost reports including, but not limited to, all general  
5 and subsidiary ledgers, books of original entry, and transaction  
6 documentation, however such data are maintained.

7 ~~((39))~~ (38) "Related organization" means an entity which is under  
8 common ownership and/or control with, or has control of, or is  
9 controlled by, the contractor.

10 (a) "Common ownership" exists when an entity is the beneficial  
11 owner of five percent or more ownership interest in the contractor and  
12 any other entity.

13 (b) "Control" exists where an entity has the power, directly or  
14 indirectly, significantly to influence or direct the actions or  
15 policies of an organization or institution, whether or not it is  
16 legally enforceable and however it is exercisable or exercised.

17 ~~((40))~~ (39) "Restricted fund" means those funds the principal  
18 and/or income of which is limited by agreement with or direction of the  
19 donor to a specific purpose.

20 ~~((41))~~ (40) "Secretary" means the secretary of the department of  
21 social and health services.

22 ~~((42))~~ (41) "Title XIX" or "Medicaid" means the 1965 amendments  
23 to the social security act, P.L. 89-07, as amended.

24 ~~((43))~~ (42) "Physical plant capital improvement" means a  
25 capitalized improvement that is limited to an improvement to the  
26 building or the related physical plant.

27 **Sec. 2.** RCW 74.46.380 and 1991 sp.s. c 8 s 12 are each amended to  
28 read as follows:

29 (1) Where depreciable assets are disposed of through sale, trade-  
30 in, scrapping, exchange, theft, wrecking, or fire or other casualty,  
31 depreciation shall no longer be taken on the assets. No further  
32 depreciation shall be taken on permanently abandoned assets.

33 (2) Where an asset has been retired from active use but is being  
34 held for stand-by or emergency service, and the department has  
35 determined that it is needed and can be effectively used in the future,  
36 depreciation may be taken.

37 ~~((3) If there is a sale of a nursing facility on or after July 1,  
38 1991, that results in a gain on sale, the actual reimbursement for~~

1 depreciation paid to the selling contractor through the medicaid  
2 reimbursement program shall be recovered by the department to the  
3 extent of any gain on sale. The purchaser is obligated to reimburse  
4 the department, whether or not the purchaser is a medicaid contractor.  
5 If the department is unable to collect from the purchaser, then the  
6 seller is responsible for reimbursing the department. The department  
7 may establish an appropriate repayment schedule to recover  
8 depreciation. If the purchaser is a medicaid contractor and the  
9 contractor does not comply with the repayment schedule established by  
10 the department, the department may deduct the recovery from the  
11 contractor's monthly medicaid payments. The department may adopt  
12 rules, as appropriate, to insure that the principles of this section  
13 are implemented with respect to leased assets, or with respect to sales  
14 of intangibles or specific assets only.))

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