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ENGROSSED SUBSTITUTE SENATE BILL 5724

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State of Washington

53rd Legislature

1993 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senator Rinehart; by request of Department of Social and Health Services)

Read first time 04/14/93.

1 AN ACT Relating to nursing home auditing and reimbursement;  
2 amending RCW 74.46.020, 74.46.230, 74.46.280, 74.46.380, 74.46.410,  
3 74.46.420, 74.46.430, 74.46.450, 74.46.460, 74.46.470, 74.46.481,  
4 74.46.490, 74.46.500, 74.46.510, and 74.46.530; reenacting and amending  
5 RCW 74.46.180; adding a new section to chapter 74.46 RCW; creating a  
6 new section; repealing RCW 74.46.260 and 74.46.495; providing an  
7 effective date; and declaring an emergency.

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

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

11 Unless the context clearly requires otherwise, the definitions in  
12 this section apply throughout this chapter.

13 (1) "Accrual method of accounting" means a method of accounting in  
14 which revenues are reported in the period when they are earned,  
15 regardless of when they are collected, and expenses are reported in the  
16 period in which they are incurred, regardless of when they are paid.

17 (2) "Ancillary care" means those services required by the  
18 individual, comprehensive plan of care provided by qualified  
19 therapists.

1 (3) "Appraisal" means the process of estimating the fair market  
2 value or reconstructing the historical cost of an asset acquired in a  
3 past period as performed by a professionally designated real estate  
4 appraiser with no pecuniary interest in the property to be appraised.  
5 It includes a systematic, analytic determination and the recording and  
6 analyzing of property facts, rights, investments, and values based on  
7 a personal inspection and inventory of the property.

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

18 (5) "Assets" means economic resources of the contractor, recognized  
19 and measured in conformity with generally accepted accounting  
20 principles.

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

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

25 (8) "Beneficial owner" means:

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

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

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

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

38 (c) Any person who, subject to subparagraph (b) of this subsection,  
39 has the right to acquire beneficial ownership of such ownership

1 interest within sixty days, including but not limited to any right to  
2 acquire:

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

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

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

7 (iv) Pursuant to the automatic termination of a trust,  
8 discretionary account, or similar arrangement;

9 except that, any person who acquires an ownership interest or power  
10 specified in subparagraphs (i), (ii), or (iii) of this subparagraph (c)  
11 with the purpose or effect of changing or influencing the control of  
12 the contractor, or in connection with or as a participant in any  
13 transaction having such purpose or effect, immediately upon such  
14 acquisition shall be deemed to be the beneficial owner of the ownership  
15 interest which may be acquired through the exercise or conversion of  
16 such ownership interest or power;

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

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

29 (ii) The pledgee agreement, prior to default, does not grant to the  
30 pledgee:

31 (A) The power to vote or to direct the vote of the pledged  
32 ownership interest; or

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

37 (9) "Capitalization" means the recording of an expenditure as an  
38 asset.

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

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

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

9 (13) "Direct care supplies" means medical, pharmaceutical, and  
10 other supplies required for the direct nursing and ancillary care of  
11 medical care recipients.

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

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

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

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

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

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

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

35 ~~((21))~~ (20) "Generally accepted auditing standards" means  
36 auditing standards approved by the American institute of certified  
37 public accountants (AICPA).

1       (~~(22)~~) (21) "Goodwill" means the excess of the price paid for a  
2 business over the fair market value of all other identifiable,  
3 tangible, and intangible assets acquired.

4       (~~(23)~~) (22) "Historical cost" means the actual cost incurred in  
5 acquiring and preparing an asset for use, including feasibility  
6 studies, architect's fees, and engineering studies.

7       (~~(24)~~) (23) "Imprest fund" means a fund which is regularly  
8 replenished in exactly the amount expended from it.

9       (~~(25)~~) (24) "Joint facility costs" means any costs which  
10 represent resources which benefit more than one facility, or one  
11 facility and any other entity.

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

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

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

31       (~~(29)~~) (28) "Net book value" means the historical cost of an  
32 asset less accumulated depreciation.

33       (~~(30)~~) (29) "Net invested funds" means the net book value of  
34 tangible fixed assets employed by a contractor to provide services  
35 under the medical care program, including land, buildings, and  
36 equipment as recognized and measured in conformity with generally  
37 accepted accounting principles, plus an allowance for working capital  
38 which shall be five percent of the (~~allowable costs~~) product of the  
39 per patient day rate multiplied by the prior calendar year reported

1 total patient days of each contractor (~~for the previous calendar~~  
2 ~~year~~)).

3 (~~(+31+)~~) (30) "Operating lease" means a lease under which rental or  
4 lease expenses are included in current expenses in accordance with  
5 generally accepted accounting principles.

6 (~~(+32+)~~) (31) "Owner" means a sole proprietor, general or limited  
7 partners, and beneficial interest holders of five percent or more of a  
8 corporation's outstanding stock.

9 (~~(+33+)~~) (32) "Ownership interest" means all interests beneficially  
10 owned by a person, calculated in the aggregate, regardless of the form  
11 which such beneficial ownership takes.

12 (~~(+34+)~~) (33) "Patient day" or "client day" means a calendar day of  
13 care which will include the day of admission and exclude the day of  
14 discharge; except that, when admission and discharge occur on the same  
15 day, one day of care shall be deemed to exist.

16 (~~(+35+)~~) (34) "Professionally designated real estate appraiser"  
17 means an individual who is regularly engaged in the business of  
18 providing real estate valuation services for a fee, and who is deemed  
19 qualified by a nationally recognized real estate appraisal educational  
20 organization on the basis of extensive practical appraisal experience,  
21 including the writing of real estate valuation reports as well as the  
22 passing of written examinations on valuation practice and theory, and  
23 who by virtue of membership in such organization is required to  
24 subscribe and adhere to certain standards of professional practice as  
25 such organization prescribes.

26 (~~(+36+)~~) (35) "Qualified therapist" means:

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

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

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

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

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

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

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

5 (h) An occupational therapist who is a graduate of a program in  
6 occupational therapy, or who has the equivalent of such education or  
7 training; and

8 (i) A respiratory care practitioner certified under chapter 18.89  
9 RCW.

10 ~~((+37+))~~ (36) "Questioned costs" means those costs which have been  
11 determined in accordance with generally accepted accounting principles  
12 but which may constitute disallowed costs or departures from the  
13 provisions of this chapter or rules and regulations adopted by the  
14 department.

15 ~~((+38+))~~ (37) "Records" means those data supporting all financial  
16 statements and cost reports including, but not limited to, all general  
17 and subsidiary ledgers, books of original entry, and transaction  
18 documentation, however such data are maintained.

19 ~~((+39+))~~ (38) "Related organization" means an entity which is under  
20 common ownership and/or control with, or has control of, or is  
21 controlled by, the contractor.

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

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

29 ~~((+40+))~~ (39) "Restricted fund" means those funds the principal  
30 and/or income of which is limited by agreement with or direction of the  
31 donor to a specific purpose.

32 ~~((+41+))~~ (40) "Secretary" means the secretary of the department of  
33 social and health services.

34 ~~((+42+))~~ (41) "Title XIX" or "Medicaid" means the 1965 amendments  
35 to the social security act, P.L. 89-07, as amended.

36 ~~((+43+))~~ (42) "Physical plant capital improvement" means a  
37 capitalized improvement that is limited to an improvement to the  
38 building or the related physical plant.

1       **Sec. 2.** RCW 74.46.180 and 1987 c 476 s 1 and 1987 c 283 s 9 are  
2 each reenacted and amended to read as follows:

3       (1) The state shall make payment of any underpayments within thirty  
4 days after the date the preliminary or final settlement report is  
5 submitted to the contractor.

6       (2) A contractor found to have received either overpayments or  
7 erroneous payments under a preliminary or final settlement shall refund  
8 such payments to the state within thirty days after the date the  
9 preliminary or final settlement report is submitted to the contractor,  
10 subject to the provisions of subsections (3), (4), and (7) of this  
11 section.

12       (3) Within the cost centers of nursing services and food, all  
13 savings resulting from the respective allowable costs being lower than  
14 the respective reimbursement rate paid to the contractor during the  
15 report period shall be refunded to the department. However, in  
16 computing a preliminary or final settlement, savings in a cost center  
17 may be shifted to cover a deficit in another cost center up to the  
18 amount of any savings~~((:—PROVIDED, That)).~~ Not more than twenty  
19 percent of the rate in a cost center may be shifted into that cost  
20 center and no shifting may be made into the property cost center~~((:—~~  
21 ~~PROVIDED FURTHER, That)).~~ There shall be no shifting out of nursing  
22 services, and savings in food shall be shifted only to cover deficits  
23 in the nursing services cost center. There shall be no shifting from  
24 the operational to the administrative cost center.

25       (4) Within the administrative and property cost centers ~~((of~~  
26 ~~administration and operations and property))~~, the contractor shall  
27 retain at least fifty percent, but not more than seventy-five percent,  
28 of any savings resulting from the respective audited allowable costs  
29 being lower than the respective reimbursement rates paid to the  
30 contractor during the report period multiplied by the number of  
31 authorized medical care client days in which said rates were in effect,  
32 except that no savings may be retained if reported costs in the  
33 administrative and property cost centers ~~((and the administration and~~  
34 ~~operations cost center))~~ exceed audited allowable costs in these cost  
35 areas by a total of ten cents or more per patient day. The secretary,  
36 by rule ~~((and regulation))~~, shall establish the basis for the specific  
37 percentages of savings to the contractors. Such rules ~~((and~~  
38 ~~regulations))~~ may provide for differences in the percentages allowed

1 for each cost center to individual facilities based on performance  
2 measures related to administrative efficiency.

3 (5) All ((allowances)) return on investment rate payments provided  
4 by RCW 74.46.530 shall be retained by the contractor to the extent net  
5 invested funds are substantiated by department field audit. Any  
6 industrial insurance dividend or premium discount under RCW 51.16.035  
7 shall be retained by the contractor to the extent that such dividend or  
8 premium discount is attributable to the contractor's private patients.

9 (6) In the event the contractor fails to make repayment in the time  
10 provided in subsection (2) of this section, the department shall  
11 either:

12 (a) Deduct the amount of refund due, plus any interest accrued  
13 under RCW 43.20B.695, from payment amounts due the contractor; or

14 (b) In the instance the contract has been terminated, (i) deduct  
15 the amount of refund due, plus interest assessed at the rate and in the  
16 manner provided in RCW 43.20B.695, from any payments due; or (ii)  
17 recover the amount due, plus any interest assessed under RCW  
18 43.20B.695, from security posted with the department or by any other  
19 lawful means.

20 (7) Where the facility is pursuing timely-filed judicial or  
21 administrative remedies in good faith regarding settlement issues, the  
22 contractor need not refund nor shall the department withhold from the  
23 facility current payment amounts the department claims to be due from  
24 the facility but which are specifically disputed by the contractor. If  
25 the judicial or administrative remedy sought by the facility is not  
26 granted after all appeals are exhausted or mutually terminated, the  
27 facility shall make payment of such amounts due plus interest accrued  
28 from the date of filing of the appeal, as payable on judgments, within  
29 sixty days of the date such decision is made.

30 **Sec. 3.** RCW 74.46.230 and 1980 c 177 s 23 are each amended to read  
31 as follows:

32 (1) The necessary and ordinary one-time expenses directly incident  
33 to the preparation of a newly constructed or purchased building by a  
34 contractor for operation as a licensed facility shall be allowable  
35 costs. These expenses shall be limited to start-up and organizational  
36 costs incurred prior to the admission of the first patient.

37 (2) Start-up costs shall include, but not be limited to,  
38 administrative and nursing salaries, utility costs, taxes, insurance,

1 repairs and maintenance, and training; except, that they shall exclude  
2 expenditures for capital assets. These costs will be allowable in the  
3 (~~administration and operations~~) administrative cost center if they  
4 are amortized over a period of not less than sixty months beginning  
5 with the month in which the first patient is admitted for care.

6 (3) Organizational costs are those necessary, ordinary, and  
7 directly incident to the creation of a corporation or other form of  
8 business of the contractor including, but not limited to, legal fees  
9 incurred in establishing the corporation or other organization and fees  
10 paid to states for incorporation; except, that they do not include  
11 costs relating to the issuance and sale of shares of capital stock or  
12 other securities. Such organizational costs will be allowable in the  
13 (~~administration and operations~~) administrative cost center if they  
14 are amortized over a period of not less than sixty months beginning  
15 with the month in which the first patient is admitted for care.

16 **Sec. 4.** RCW 74.46.280 and 1980 c 177 s 28 are each amended to read  
17 as follows:

18 (1) Management fees will be allowed only if:

19 (a) A written management agreement both creates a principal/agent  
20 relationship between the contractor and the manager, and sets forth the  
21 items, services, and activities to be provided by the manager; and

22 (b) Documentation demonstrates that the services contracted for  
23 were actually delivered.

24 (2) To be allowable, fees must be for necessary, nonduplicative  
25 services. (~~Allowable fees for general management services, including  
26 the portion of a management fee which is not allocated to specific  
27 services such as accounting, are limited to~~

28 ~~(a) the maximum allowable compensation under RCW 74.46.260 of the  
29 licensed administrator and, if the facility has at least eighty beds,  
30 of an assistant administrator, less~~

31 ~~(b) actual compensation received by the licensed administrator and  
32 by the assistant administrator and administrator in training, if any.  
33 In computing maximum allowable compensation under RCW 74.46.260 for a  
34 facility with at least eighty beds, include the maximum compensation of  
35 an assistant administrator even if an assistant administrator is not  
36 employed.))~~

1 (3) A management fee paid to or for the benefit of a related  
2 organization will be allowable to the extent it does not exceed the  
3 lower of((÷

4 (a) ~~The limits set out in subsection (2) of this section; or~~

5 (b) ~~The lower of~~) the actual cost to the related organization of  
6 providing necessary services related to patient care under the  
7 agreement((÷)) or the cost of comparable services purchased elsewhere.  
8 Where costs to the related organization represent joint facility costs,  
9 the measurement of such costs shall comply with RCW 74.46.270.

10 (4) A copy of the agreement must be received by the department at  
11 least sixty days before it is to become effective. A copy of any  
12 amendment to a management agreement must also be received by the  
13 department at least thirty days in advance of the date it is to become  
14 effective.

15 ~~((5) Central office costs for general management services,~~  
16 ~~including the portion of a management expense which is not allocated to~~  
17 ~~specific services, such as accounting, shall be subject to the~~  
18 ~~management fee limits determined in subsections (2) and (3) of this~~  
19 ~~section.))~~

20 **Sec. 5.** RCW 74.46.380 and 1991 sp.s. c 8 s 12 are each amended to  
21 read as follows:

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

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

30 ~~((3) If there is a sale of a nursing facility on or after July 1,~~  
31 ~~1991, that results in a gain on sale, the actual reimbursement for~~  
32 ~~depreciation paid to the selling contractor through the medicaid~~  
33 ~~reimbursement program shall be recovered by the department to the~~  
34 ~~extent of any gain on sale. The purchaser is obligated to reimburse~~  
35 ~~the department, whether or not the purchaser is a medicaid contractor.~~  
36 ~~If the department is unable to collect from the purchaser, then the~~  
37 ~~seller is responsible for reimbursing the department. The department~~  
38 ~~may establish an appropriate repayment schedule to recover~~

1 depreciation.— If the purchaser is a medicaid contractor and the  
2 contractor does not comply with the repayment schedule established by  
3 the department, the department may deduct the recovery from the  
4 contractor's monthly medicaid payments.— The department may adopt  
5 rules, as appropriate, to insure that the principles of this section  
6 are implemented with respect to leased assets, or with respect to sales  
7 of intangibles or specific assets only.))

8       **Sec. 6.** RCW 74.46.410 and 1991 sp.s. c 8 s 15 are each amended to  
9 read as follows:

10       (1) Costs will be unallowable if they are not documented,  
11 necessary, ordinary, and related to the provision of care services to  
12 authorized patients.

13       (2) Unallowable costs include, but are not limited to, the  
14 following:

15       (a) Costs of items or services not covered by the medical care  
16 program. Costs of such items or services will be unallowable even if  
17 they are indirectly reimbursed by the department as the result of an  
18 authorized reduction in patient contribution;

19       (b) Costs of services and items provided to recipients which are  
20 covered by the department's medical care program but not included in  
21 care services established by the department under this chapter;

22       (c) Costs associated with a capital expenditure subject to section  
23 1122 approval (part 100, Title 42 C.F.R.) if the department found it  
24 was not consistent with applicable standards, criteria, or plans. If  
25 the department was not given timely notice of a proposed capital  
26 expenditure, all associated costs will be unallowable up to the date  
27 they are determined to be reimbursable under applicable federal  
28 regulations;

29       (d) Costs associated with a construction or acquisition project  
30 requiring certificate of need approval pursuant to chapter 70.38 RCW if  
31 such approval was not obtained;

32       (e) Interest costs other than those provided by RCW 74.46.290 on  
33 and after the effective date of RCW 74.46.530;

34       (f) Salaries or other compensation of owners, officers, directors,  
35 stockholders, and others associated with the contractor or home office,  
36 except compensation paid for service related to patient care;

37       (g) Costs in excess of limits or in violation of principles set  
38 forth in this chapter;

- 1 (h) Costs resulting from transactions or the application of  
2 accounting methods which circumvent the principles of the cost-related  
3 reimbursement system set forth in this chapter;
- 4 (i) Costs applicable to services, facilities, and supplies  
5 furnished by a related organization in excess of the lower of the cost  
6 to the related organization or the price of comparable services,  
7 facilities, or supplies purchased elsewhere;
- 8 (j) Bad debts of non-Title XIX recipients. Bad debts of Title XIX  
9 recipients are allowable if the debt is related to covered services, it  
10 arises from the recipient's required contribution toward the cost of  
11 care, the provider can establish that reasonable collection efforts  
12 were made, the debt was actually uncollectible when claimed as  
13 worthless, and sound business judgment established that there was no  
14 likelihood of recovery at any time in the future;
- 15 (k) Charity and courtesy allowances;
- 16 (l) Cash, assessments, or other contributions, excluding dues, to  
17 charitable organizations, professional organizations, trade  
18 associations, or political parties, and costs incurred to improve  
19 community or public relations;
- 20 (m) Vending machine expenses;
- 21 (n) Expenses for barber or beautician services not included in  
22 routine care;
- 23 (o) Funeral and burial expenses;
- 24 (p) Costs of gift shop operations and inventory;
- 25 (q) Personal items such as cosmetics, smoking materials, newspapers  
26 and magazines, and clothing, except those used in patient activity  
27 programs;
- 28 (r) Fund-raising expenses, except those directly related to the  
29 patient activity program;
- 30 (s) Penalties and fines;
- 31 (t) Expenses related to telephones, televisions, radios, and  
32 similar appliances in patients' private accommodations;
- 33 (u) Federal, state, and other income taxes;
- 34 (v) Costs of special care services except where authorized by the  
35 department;
- 36 (w) Expenses of key-man insurance and other insurance or retirement  
37 plans not made available to all employees;
- 38 (x) Expenses of profit-sharing plans;

1 (y) Expenses related to the purchase and/or use of private or  
2 commercial airplanes which are in excess of what a prudent contractor  
3 would expend for the ordinary and economic provision of such a  
4 transportation need related to patient care;

5 (z) Personal expenses and allowances of owners or relatives;

6 (aa) All expenses of maintaining professional licenses or  
7 membership in professional organizations;

8 (bb) Costs related to agreements not to compete;

9 (cc) Amortization of goodwill;

10 (dd) Expenses related to vehicles which are in excess of what a  
11 prudent contractor would expend for the ordinary and economic provision  
12 of transportation needs related to patient care;

13 (ee) Legal and consultant fees in connection with a fair hearing  
14 against the department where a decision is rendered in favor of the  
15 department or where otherwise the determination of the department  
16 stands;

17 (ff) Legal and consultant fees of a contractor or contractors in  
18 connection with a lawsuit against the department;

19 (gg) Lease acquisition costs and other intangibles not related to  
20 patient care;

21 (hh) All rental or lease costs other than those provided in RCW  
22 74.46.300 on and after the effective date of RCW 74.46.510 and  
23 74.46.530;

24 (ii) Postsurvey charges incurred by the facility as a result of  
25 subsequent inspections under RCW 18.51.050 which occur beyond the first  
26 postsurvey visit during the certification survey calendar year;

27 ~~(jj) ((Costs and fees otherwise allowable for legal services,~~  
28 ~~whether purchased, allocated by a home office, regional office or~~  
29 ~~management company, or performed by the contractor or employees of the~~  
30 ~~contractor, in excess of the eighty fifth percentile of such costs~~  
31 ~~reported by all contractors for the most recent cost report period:~~  
32 ~~PROVIDED, That this limit shall not apply if a contractor has not~~  
33 ~~exceeded this percentile in any of the preceding three annual cost~~  
34 ~~report periods;~~

35 ~~(kk) Costs and fees otherwise allowable for accounting and~~  
36 ~~bookkeeping services, whether purchased, allocated by a home office,~~  
37 ~~regional office or management company, or performed by the contractor~~  
38 ~~or employees of the contractor, in excess of the eighty fifth~~  
39 ~~percentile of such costs reported by all contractors for the most~~

1 ~~recent cost report period: PROVIDED, That this limit shall not apply~~  
2 ~~if a contractor has not exceeded this percentile in any of the~~  
3 ~~preceding three annual cost report periods;~~

4 ~~((ll))~~) Compensation paid for any purchased nursing care services,  
5 including registered nurse, licensed practical nurse, and nurse  
6 assistant services, obtained through service contract arrangement in  
7 excess of the amount of compensation paid for such hours of nursing  
8 care service had they been paid at the average hourly wage, including  
9 related taxes and benefits, for in-house nursing care staff of like  
10 classification at the same nursing facility, as reported in the most  
11 recent cost report period;

12 ~~((mm))~~) (kk) For all partial or whole rate periods after July 17,  
13 1984, costs of land and depreciable assets that cannot be reimbursed  
14 under the Deficit Reduction Act of 1984 and implementing state  
15 statutory and regulatory provisions.

16 **Sec. 7.** RCW 74.46.420 and 1985 c 361 s 18 are each amended to read  
17 as follows:

18 The following principles are inherent in RCW 74.46.430 through  
19 74.46.590:

20 (1) Reimbursement rates will be set prospectively on a per patient  
21 day basis on a two-year cycle corresponding to each state biennium; and

22 (2) The rates ~~((so established will))~~, in the nursing services,  
23 food, administrative, and operational cost centers, shall be adjusted  
24 downward or upward when set effective July 1 of the first fiscal year  
25 of the two-year rate-setting cycle and adjusted again downward or  
26 upward effective July 1 of the second fiscal year of the rate-setting  
27 cycle for economic ((conditions and)) trends ((in accordance with  
28 appropriations made by the legislature as consistent with federal  
29 requirements for the period to be covered by such rates)) and  
30 conditions.

31 (3) The July 1 rates for the first year of each biennium shall be  
32 adjusted by the change in the implicit price deflator for personal  
33 consumption expenditures index published by the bureau of labor  
34 statistics of the United States department of labor. The period used  
35 to measure the increase or decrease to be applied to these first year  
36 biennial rates shall be the calendar year preceding the July 1  
37 commencement of the state biennium.

1       (4) The July 1 rates for the second year of each biennium shall be  
2 adjusted by the change in the nursing home input price index without  
3 capital costs published by the health care financing administration of  
4 the department of health and human services, HCFA index, however, any  
5 increase shall be multiplied by one and one-half. The period used to  
6 measure the HCFA index increase to be multiplied by one and one-half  
7 and applied or decrease to be applied to these second-year biennial  
8 rates shall also be the calendar year preceding the July 1 commencement  
9 of the state biennium: PROVIDED, However, That in the event the change  
10 in the HCFA index measured over the following calendar year, the one  
11 terminating six months after the start of the state biennium, is  
12 twenty-five percent greater or less than the change in the HCFA index  
13 measured over the calendar year preceding commencement of the state  
14 biennium, the department shall use the HCFA index increase multiplied  
15 by one and one-half or decrease in such following calendar year to  
16 inflate or decrease nursing facilities' nursing services, food,  
17 administrative, and operational rates for July 1 of the second biennial  
18 year.

19       (5) If either the implicit price deflator index or the health care  
20 financing administration index ceases to be published in the future,  
21 the department shall select by rule and use in their place one or more  
22 measures of change from an alternate source or sources for the same or  
23 comparable time periods.

24       **Sec. 8.** RCW 74.46.430 and 1987 2nd ex.s. c 1 s 2 are each amended  
25 to read as follows:

26       (1) The department, as provided by this chapter, will determine  
27 prospective cost-related reimbursement rates for services provided to  
28 medical care recipients. Each rate so determined shall represent the  
29 contractor's maximum compensation within each cost center for each  
30 patient day for such medical care recipient.

31       (2) As required, the department may modify such maximum per patient  
32 day rates pursuant to the administrative review provisions of RCW  
33 74.46.780.

34       (3) ~~((Until the effective date of RCW 74.46.510 and 74.46.530, the~~  
35 ~~maximum prospective reimbursement rates for the administration and~~  
36 ~~operations and the property cost centers shall be established based~~  
37 ~~upon a minimum facility occupancy level of eighty five percent.~~

1       ~~(4) On and after the effective date of RCW 74.46.510 and~~  
2 ~~74.46.530,~~) The maximum prospective reimbursement rates for the  
3 ~~((administration and operations))~~ administrative, operational, and  
4 ~~((the))~~ property cost centers, and the return on investment  
5 ~~((allowance))~~ rate shall be established based upon a minimum facility  
6 occupancy level of eighty-five percent.

7       ~~((5))~~ (4) All contractors shall be required to adjust and  
8 maintain wages for all employees to a minimum hourly wage ~~((established~~  
9 ~~by the legislature in the biennial appropriations act, if the~~  
10 ~~legislature appropriates moneys to fund prospectively the portion of~~  
11 ~~the minimum wage attributable to services to medicaid patients.~~  
12 ~~Prospective rate revisions to fund any minimum wage increases shall be~~  
13 ~~made only on the dates authorized in the appropriation act. The~~  
14 ~~department shall by regulation limit reimbursement to the amount~~  
15 ~~appropriated for legislatively authorized enhancement for~~  
16 ~~nonadministrative wages and benefits above the moneys necessary to fund~~  
17 ~~minimum wages specified in this section. The department in considering~~  
18 ~~reimbursement for legislatively authorized wage enhancements will take~~  
19 ~~into consideration facility wage history over the past three cost~~  
20 ~~report periods))~~ of four dollars and seventy-six cents per hour  
21 beginning January 1, 1988, and five dollars and fifteen cents per hour  
22 beginning January 1, 1989.

23       **Sec. 9.** RCW 74.46.450 and 1983 1st ex.s. c 67 s 20 are each  
24 amended to read as follows:

25       (1) Prospective reimbursement rates for a new contractor will be  
26 established within sixty days following receipt by the department of  
27 the properly completed projected budget required by RCW 74.46.670.  
28 Such reimbursement rates will become effective as of the effective date  
29 of the contract and shall remain in effect until ~~((rates can be~~  
30 ~~established under RCW 74.46.460 based on a contractor's cost report~~  
31 ~~including at least six months of cost data))~~ adjusted or reset as  
32 provided in this chapter.

33       (2) Such reimbursement rates will be based on the contractor's  
34 projected cost of operations and on costs and payment rates of the  
35 prior contractor, if any, or of other contractors in comparable  
36 circumstances.

37       (3) If a properly completed budget is not received at least sixty  
38 days prior to the effective date of the contract, the department will

1 establish preliminary rates based on the other factors specified in  
2 subsection (2) of this section. These preliminary rates will remain in  
3 effect until ~~((a determination is made pursuant to RCW 74.46.460))~~  
4 adjusted or reset as provided in this chapter.

5 (4) The department is authorized to develop policies and procedures  
6 in rule to address the computation of rates for the first and second  
7 fiscal years of each biennium, including steps necessary to prorate  
8 rate adjustments for economic trends and conditions as authorized in  
9 RCW 74.46.420, for contractors having less than twelve months of cost  
10 report data for the prior calendar year.

11 **Sec. 10.** RCW 74.46.460 and 1987 c 476 s 3 are each amended to read  
12 as follows:

13 (1) Each contractor's reimbursement rates will be determined or  
14 adjusted prospectively at least once each calendar year, as provided in  
15 this chapter, to be effective July 1st. Provided, that a contractor's  
16 rate for the first fiscal year of each biennium must be established  
17 upon its own prior calendar period report of at least six months of  
18 cost data.

19 (2) Rates may be adjusted as determined by the department to take  
20 into account variations in the distribution of patient classifications  
21 or changes in patient characteristics from the prior reporting year,  
22 program changes required by the department, or changes in staffing  
23 levels at a facility required by the department. ~~((Rates shall be~~  
24 ~~adjusted by the amount of legislatively authorized enhancements in~~  
25 ~~accordance with RCW 74.46.430(5) and 74.46.470(2).)) Rates may also be  
26 adjusted to cover costs associated with placing a nursing home in  
27 receivership which costs are not covered by the rate of the former  
28 contractor, including: Compensation of the receiver, reasonable  
29 expenses of receivership and transition of control, and costs incurred  
30 by the receiver in carrying out court instructions or rectifying  
31 deficiencies found. Rates shall be adjusted for any capitalized  
32 additions or replacements made as a condition for licensure or  
33 certification. Rates shall be adjusted for capitalized improvements  
34 done under RCW 74.46.465.~~

35 ~~((3) Where the contractor participated in the provisions of~~  
36 ~~prospective cost-related reimbursement in effect prior to July 1, 1983,~~  
37 ~~such contractor's prospective rate effective July 1, 1983, will be~~

1 ~~determined utilizing the contractor's desk reviewed allowable costs for~~  
2 ~~calendar year 1982.~~

3 ~~(4) All prospective reimbursement rates for 1984 and thereafter~~  
4 ~~shall be determined utilizing the prior year's desk reviewed cost~~  
5 ~~reports.))~~

6 **Sec. 11.** RCW 74.46.470 and 1987 c 476 s 4 are each amended to read  
7 as follows:

8 (1) A contractor's reimbursement rates for medical care recipients  
9 will be determined utilizing net invested funds and desk-reviewed cost  
10 report data within the following cost centers:

11 (a) Nursing services;

12 (b) Food;

13 (c) ~~((Administration and operations))~~ Administrative; ~~((and))~~

14 (d) Operational; and

15 (e) Property.

16 (2) There shall be for the time period January 1988 through June  
17 1990 only an enhancement cost center established to reimburse  
18 contractors for specific legislatively authorized enhancements for  
19 nonadministrative wages and benefits to ensure that such enhancements  
20 are used exclusively for the legislatively authorized purposes. For  
21 purposes of settlement, funds appropriated to this cost center shall  
22 only be used for expenditures for which the legislative authorization  
23 is granted. Such funds may be used only in the following  
24 circumstances:

25 (a) The contractor has increased expenditures for which legislative  
26 authorization is granted to at least the highest level paid in any of  
27 the last three cost years, plus, beginning July 1, 1987, any percentage  
28 inflation adjustment as was granted each year under RCW 74.46.495; and

29 (b) All funds shifted from the enhancement cost center are shown to  
30 have been expended for legislatively authorized enhancements.

31 (3) If the contractor does not spend the amount appropriated to  
32 this cost center in the legislatively authorized manner, then the  
33 amounts not appropriately spent shall be recouped at preliminary or  
34 final settlement pursuant to RCW 74.46.160.

35 (4) For purposes of this section, "nonadministrative wages and  
36 benefits" means wages and payroll taxes paid with respect to, and the  
37 employer share of the cost of benefits provided to, employees in job  
38 classes specified in an appropriation, which may not include

1 administrators, assistant administrators, or administrators in  
2 training.

3 (5) Amounts expended in the enhancement cost center in excess of  
4 the minimum wage established under RCW 74.46.430 are subject to all  
5 provisions contained in this chapter.

6 **Sec. 12.** RCW 74.46.481 and 1991 sp.s. c 8 s 16 are each amended to  
7 read as follows:

8 (1) The nursing services cost center shall include for reporting  
9 and audit purposes all costs related to the direct provision of nursing  
10 and related care, including fringe benefits and payroll taxes for the  
11 nursing and related care personnel, and the cost of nursing supplies.  
12 (~~For rates effective for state fiscal year 1984,~~) The department  
13 shall adopt by administrative rule a definition of "related care"  
14 (~~which shall incorporate, but not exceed services reimbursable as of~~  
15 ~~June 30, 1983. For rates effective for state fiscal year 1985, the~~  
16 ~~definition of related care shall include ancillary care~~). For rates  
17 effective after June 30, 1991, nursing services costs, as reimbursed  
18 within this chapter (~~and as tested for reasonableness within this~~  
19 ~~section~~)), shall not include costs of any purchased nursing care  
20 services, including registered nurse, licensed practical nurse, and  
21 nurse assistant services, obtained through service contract arrangement  
22 in excess of the amount of compensation paid for such hours of nursing  
23 care service had they been paid at the average hourly wage, including  
24 related taxes and benefits, for in-house nursing care staff of like  
25 classification at the same nursing facility, as reported in the most  
26 recent cost report period.

27 (2) The department shall adopt (~~by~~) through administrative rules  
28 a method for establishing a nursing services cost center rate  
29 consistent with the principles stated in this section.

30 (3) Utilizing regression or other statistical technique, the  
31 department shall determine a reasonable limit on facility nursing staff  
32 taking into account facility patient characteristics. For purposes of  
33 this section, facility nursing staff refers to registered nurses,  
34 licensed practical nurses and nursing assistants employed by the  
35 facility or obtained through temporary labor contract arrangements.  
36 Effective January 1, 1988, the hours associated with the training of  
37 nursing assistants and the supervision of that training for nursing  
38 assistants shall not be included in the calculation of facility nursing

1 staff. In selecting a measure of patient characteristics, the  
2 department shall take into account:

3 (a) The correlation between alternative measures and facility  
4 nursing staff; and

5 (b) The cost of collecting information for and computation of a  
6 measure.

7 If regression is used, the limit shall be set at predicted nursing  
8 staff plus 1.75 regression standard errors. If another statistical  
9 method is utilized, the limit shall be set at a level corresponding to  
10 1.75 standard errors above predicted staffing computed according to a  
11 regression procedure. A regression calculated shall be effective for  
12 the entire biennium.

13 (4) No facility shall receive reimbursement for nursing staff  
14 levels in excess of the limit(~~(, except that, if a facility was~~  
15 ~~reimbursed for a nursing staff level in excess of the limit as of June~~  
16 ~~30, 1983, the facility may chose [choose] to continue to receive its~~  
17 ~~June, 1983 nursing services rate plus any adjustments in rates, such as~~  
18 ~~adjustments for economic trends, made available to all facilities)).~~  
19 However, nursing staff levels established under subsection (3) of this  
20 section shall not apply to the nursing services cost center  
21 reimbursement rate only for the pilot facility especially designed to  
22 meet the needs of persons living with AIDS as defined by RCW 70.24.017  
23 and specifically authorized for this purpose under the 1989 amendment  
24 to the Washington state health plan. (~~The reasonableness limit~~  
25 ~~established pursuant to this subsection shall remain in effect for the~~  
26 ~~period July 1, 1983 through June 30, 1985. At that time the department~~  
27 ~~may revise the measure of patient characteristics or method used to~~  
28 ~~establish the limit.))~~

29 (5) (~~The department shall select an index of cost increase~~  
30 ~~relevant to the nursing and related services cost area. In the absence~~  
31 ~~of a more representative index, the department shall use the medical~~  
32 ~~care component index as maintained by the United States bureau of labor~~  
33 ~~statistics.)) Every two years when rates are set at the beginning of  
34 each new biennium, the department shall divide into two peer groups  
35 nursing facilities located in the state of Washington providing  
36 services to medicaid residents: (a) Those facilities located within a  
37 metropolitan statistical area as defined and determined by the United  
38 States office of management and budget or other applicable federal  
39 office and (b) those not located in such an area. The facilities in~~

1 each peer group shall then be arrayed from lowest to highest by  
2 magnitude of per patient day adjusted nursing services cost from the  
3 prior report year, regardless of whether any such adjustments are  
4 contested by the nursing facility, and the median or fiftieth  
5 percentile cost for each peer group shall be determined. Nursing  
6 services rates for facilities within each peer group for the first year  
7 of the biennium shall be set at the lower of the facility's adjusted  
8 per patient day nursing services cost from the prior report period or  
9 the median cost for the facility's peer group plus twenty-five percent.  
10 This rate shall be reduced or inflated as authorized by RCW 74.46.420.  
11 However, the per patient day peer group median cost plus twenty-five  
12 percent limit shall not apply to the nursing services cost center  
13 reimbursement rate only for the pilot facility especially designed to  
14 meet the needs of persons living with AIDS as defined by RCW 70.24.017  
15 and specifically authorized for this purpose under the 1989 amendment  
16 to the Washington state health plan.

17 ~~(6) ((If a facility's nursing staff level is below the limit~~  
18 ~~specified in subsection (3) of this section, the department shall~~  
19 ~~determine the percentage increase for all items included in the nursing~~  
20 ~~services cost center between the facility's most recent cost reporting~~  
21 ~~period and the next prior cost reporting period.~~

22 ~~(a) If the percentage cost increase for a facility is below the~~  
23 ~~increase in the selected index for the same time period, the facility's~~  
24 ~~reimbursement rate in the nursing services cost center shall equal the~~  
25 ~~facility's cost from the most recent cost reporting period plus any~~  
26 ~~allowance for inflation provided by legislative appropriation.~~

27 ~~(b) If the percentage cost increase for a facility exceeds the~~  
28 ~~increase in the selected index, the department shall limit the cost~~  
29 ~~used for setting the facility's rate in the nursing services cost area~~  
30 ~~to a level reflecting the increase in the selected index.~~

31 ~~(7) If the facility's nursing staff level exceeds the~~  
32 ~~reasonableness limit established in subsection (3) of this section, the~~  
33 ~~department shall determine the increase for all items included in the~~  
34 ~~nursing services cost center between the facility's most recent cost~~  
35 ~~reporting period and the next prior cost reporting period.~~

36 ~~(a) If the percentage cost increase for a facility is below the~~  
37 ~~increase in the index selected pursuant to subsection (5) of this~~  
38 ~~section, the facility's reimbursement rate in the nursing cost center~~  
39 ~~shall equal the facility's cost from the most recent cost reporting~~

1 period adjusted downward to reflect the limit on nursing staff, plus  
2 any allowance for inflation provided by legislative appropriation  
3 subject to the provisions of subsection (4) of this section.

4 (b) If the percentage cost increase for a facility exceeds the  
5 increase in the selected index, the department shall limit the cost  
6 used for setting the facility's rate in the nursing services cost  
7 center to a level reflecting the nursing staff limit and the cost  
8 increase limit, subject to the provisions of subsection (4) of this  
9 section, plus any allowance for inflation provided by legislative  
10 appropriation.

11 (8) Prospective rates for the nursing services cost center, for  
12 state fiscal year 1992 only, shall not be subject to the cost growth  
13 index lid in subsections (5), (6), and (7) of this section. The lid  
14 shall apply for state fiscal year 1991 rate setting and all state  
15 fiscal years subsequent to fiscal year 1992.

16 (9)) If a nursing facility is impacted by the limit authorized in  
17 subsection (5) of this section, it shall not receive a prospective rate  
18 in nursing services for July 1, 1993, less than the same facility's  
19 prospective rate in nursing services as of June 30, 1993, adjusted by  
20 any increase in the implicit price deflator for personal consumption  
21 expenditures, IPD index, as measured over the period authorized by RCW  
22 74.46.420(3).

23 (7) A nursing facility's rate in nursing services for the second  
24 year of each biennium shall be that facility's rate as of July 1 of the  
25 first year of that biennium reduced or inflated as authorized by RCW  
26 74.46.420. The alternating procedures prescribed in this section for  
27 a facility's two July 1 nursing services rates occurring within each  
28 biennium shall be followed in the same order for each succeeding  
29 biennium.

30 (8) Median costs for peer groups shall be calculated initially as  
31 provided in this chapter on the basis of the most recent adjusted cost  
32 information available to the department prior to the calculation of the  
33 new rate for July 1 of the first fiscal year of each biennium,  
34 regardless of whether the adjustments are contested or subject to  
35 pending administrative or judicial review. Median costs for peer  
36 groups shall be recalculated as provided in this chapter on the basis  
37 of the most recent adjusted cost information available to the  
38 department on October 31 of the first fiscal year of each biennium, and  
39 shall apply retroactively to the prior July 1 rate, regardless of

1 whether the adjustments are contested or subject to pending  
2 administrative or judicial review. Median costs shall not be adjusted  
3 to reflect subsequent administrative or judicial rulings, whether final  
4 or not.

5 (9) The department is authorized to determine on a systematic basis  
6 facilities with unmet patient care service needs. The department may  
7 increase the nursing services cost center prospective rate for a  
8 facility beyond the level determined in accordance with subsection (6)  
9 of this section if the facility's actual and reported nursing staffing  
10 is one standard error or more below predicted staffing as determined  
11 according to the method selected pursuant to subsection (3) of this  
12 section and the facility has unmet patient care service needs:  
13 PROVIDED, That prospective rate increases authorized by this subsection  
14 shall be funded only from legislative appropriations made for this  
15 purpose during the periods authorized by such appropriations or other  
16 laws and the increases shall be conditioned on specified improvements  
17 in patient care at such facilities.

18 (10) The department shall establish a method for identifying  
19 patients with exceptional care requirements and a method for  
20 establishing or negotiating on a consistent basis rates for such  
21 patients.

22 (11) The department, in consultation with interested parties, shall  
23 adopt rules to establish the criteria the department will use in  
24 reviewing any requests by a contractor for a prospective rate  
25 adjustment to be used to increase the number of nursing staff. These  
26 rules shall also specify the time period for submission and review of  
27 staffing requests: PROVIDED, That a decision on a staffing request  
28 shall not take longer than sixty days from the date the department  
29 receives such a complete request. In establishing the criteria, the  
30 department may consider, but is not limited to, the following:

31 (a) Increases in ((acuity)) debility levels of contractors'  
32 residents determined in accordance with the department's assessment and  
33 reporting procedures and requirements utilizing the minimum data set;

34 (b) Staffing patterns for similar facilities in the same peer  
35 group;

36 (c) Physical plant of contractor; and

37 (d) Survey, inspection of care, and department consultation  
38 results.

1       **Sec. 13.** RCW 74.46.490 and 1983 1st ex.s. c 67 s 25 are each  
2 amended to read as follows:

3       (1) The food cost center shall include for reporting purposes all  
4 costs for bulk and raw food and beverages purchased for the dietary  
5 needs of medical care recipients.

6       (2) ~~((Reimbursement for the food cost center shall be at the  
7 January 1, 1983, reimbursement rate, adjusted annually for inflation.))~~  
8 Every two years when rates are set at the beginning of each new  
9 biennium, the department shall divide into two peer groups nursing  
10 facilities located in the state of Washington providing services to  
11 medicaid residents: (a) Those facilities located within a metropolitan  
12 statistical area as defined and determined by the United States office  
13 of management and budget or other applicable federal office and (b)  
14 those not located in such an area. The facilities in each peer group  
15 shall then be arrayed from lowest to highest by magnitude of per  
16 patient day adjusted food cost from the prior report year, regardless  
17 of whether any such adjustments are contested by the nursing facility,  
18 and the median or fiftieth percentile cost for each peer group shall be  
19 determined. Food rates for facilities within each peer group for the  
20 first year of the biennium shall be set at the lower of the facility's  
21 adjusted per patient day food cost from the prior report period or the  
22 median cost for the facility's peer group plus twenty-five percent.  
23 This rate shall be reduced or inflated as authorized by RCW 74.46.420.

24       (3) A nursing facility's food rate for the second year of each  
25 biennium shall be that facility's rate as of July 1 of the first year  
26 of that biennium reduced or inflated as authorized by RCW 74.46.420.  
27 The alternating procedures prescribed in this section for a facility's  
28 two July 1 food rates occurring within each biennium shall be followed  
29 in the same order for each succeeding biennium.

30       (4) Median costs for peer groups shall be calculated initially as  
31 provided in this chapter on the basis of the most recent adjusted cost  
32 information available to the department prior to the calculation of the  
33 new rate for July 1 of the first fiscal year of each biennium,  
34 regardless of whether the adjustments are contested or subject to  
35 pending administrative or judicial review. Median costs for peer  
36 groups shall be recalculated as provided in this chapter on the basis  
37 of the most recent adjusted cost information available to the  
38 department on October 31 of the first fiscal year of each biennium, and  
39 shall apply retroactively to the prior July 1 rate, regardless of

1 whether the adjustments are contested or subject to pending  
2 administrative or judicial review. Median costs shall not be adjusted  
3 to reflect subsequent administrative or judicial rulings, whether final  
4 or not.

5 **Sec. 14.** RCW 74.46.500 and 1992 c 182 s 1 are each amended to read  
6 as follows:

7 (1) The ~~((administration and operations))~~ administrative cost  
8 center shall include ~~((all items not included in the cost centers of~~  
9 ~~nursing services, food, and property.~~

10 ~~(2) Subject to subsection (4) of this section, the administration~~  
11 ~~and operations cost center reimbursement rate for each facility shall~~  
12 ~~be based on the computation in this subsection and shall not exceed the~~  
13 ~~eighty-fifth percentile of (a) the rates of all reporting facilities~~  
14 ~~derived from the computation below, or (b) reporting facilities grouped~~  
15 ~~in accordance with subsection (3) of this section:~~

16 ~~AR = TAC/TPD, where~~

17 ~~AR = the administration and operations cost center reimbursement~~  
18 ~~rate for a facility;~~

19 ~~TAC = the total costs of the administration and operations cost~~  
20 ~~center plus the retained savings from such cost center as~~  
21 ~~provided in RCW 74.46.180 of a facility; and~~

22 ~~TPD = the total patient days for a facility for the prior year.~~

23 ~~(3) The secretary may group facilities based on factors which could~~  
24 ~~reasonably influence cost requirements of this cost center, other than~~  
25 ~~ownership or legal organization characteristics.~~

26 ~~(4) In applying the eighty-fifth percentile reimbursement limit~~  
27 ~~authorized by subsection (2) of this section to the pilot facility~~  
28 ~~specially designed to meet the needs of persons living with AIDS as~~  
29 ~~defined by RCW 70.24.017, and specifically authorized for this purpose~~  
30 ~~under the 1989 amendment to the Washington state health plan, the~~  
31 ~~department shall exempt the cost of nursing supplies reported by the~~  
32 ~~pilot facility in excess of the average of nursing supplies cost for~~  
33 ~~medicaid nursing facilities state-wide))~~ for cost reporting purposes  
34 all administrative, oversight, and management costs whether facility  
35 on-site or allocated in accordance with a department-approved joint-  
36 cost allocation methodology. Such costs shall be identical to the cost  
37 report line item costs categorized under "general and administrative"

1 in the "administration and operations" combined cost center existing  
2 prior to January 1, 1993, except for nursing supplies and purchased  
3 medical records.

4 (2) Every two years when rates are set at the beginning of each new  
5 biennium, the department shall divide into two peer groups nursing  
6 facilities located in the state of Washington providing services to  
7 medicaid residents: (a) Those facilities located within a metropolitan  
8 statistical area as defined and determined by the United States office  
9 of management and budget or other applicable federal office and (b)  
10 those not located in such an area. The facilities in each peer group  
11 shall then be arrayed from lowest to highest by magnitude of per  
12 patient day adjusted administrative cost from the prior report year,  
13 regardless of whether any such adjustments are contested by the nursing  
14 facility, and the median or fiftieth percentile cost for each peer  
15 group shall be determined. Administrative rates for facilities within  
16 each peer group for the first year of the biennium shall be set at the  
17 lower of the facility's adjusted per patient day administrative cost  
18 from the prior report period or the median cost for the facility's peer  
19 group plus ten percent. This rate shall be reduced or inflated as  
20 authorized by RCW 74.46.420.

21 (3) A nursing facility's administrative rate for the second year of  
22 each biennium shall be that facility's rate as of July 1 of the first  
23 year of that biennium reduced or inflated as authorized by RCW  
24 74.46.420. The alternating procedures prescribed in this section for  
25 a facility's two July 1 administrative rates occurring within each  
26 biennium shall be followed in the same order for each succeeding  
27 biennium.

28 (4) Median costs for peer groups shall be calculated initially as  
29 provided in this chapter on the basis of the most recent adjusted cost  
30 information available to the department prior to the calculation of the  
31 new rate for July 1 of the first fiscal year of each biennium,  
32 regardless of whether the adjustments are contested or subject to  
33 pending administrative or judicial review. Median costs for peer  
34 groups shall be recalculated as provided in this chapter on the basis  
35 of the most recent adjusted cost information available to the  
36 department on October 31 of the first fiscal year of each biennium, and  
37 shall apply retroactively to the prior July 1 rate, regardless of  
38 whether the adjustments are contested or subject to pending  
39 administrative or judicial review. Median costs shall not be adjusted

1 to reflect subsequent administrative or judicial rulings, whether final  
2 or not.

3 NEW SECTION. **Sec. 15.** A new section is added to chapter 74.46 RCW  
4 to read as follows:

5 (1) The operational cost center shall include for cost reporting  
6 purposes all allowable costs of the daily operation of the facility not  
7 included in nursing services and related care, food, administrative, or  
8 property costs, whether such costs are facility on-site or allocated in  
9 accordance with a department-approved joint-cost allocation  
10 methodology.

11 (2) Every two years when rates are set at the beginning of each new  
12 biennium, the department shall divide into two peer groups nursing  
13 facilities located in the state of Washington providing services to  
14 medicaid residents: (a) Those facilities located within a metropolitan  
15 statistical area as defined and determined by the United States office  
16 of management and budget or other applicable federal office and (b)  
17 those not located in such an area. The facilities in each peer group  
18 shall then be arrayed from lowest to highest by magnitude of per  
19 patient day adjusted operational cost from the prior report year,  
20 regardless of whether any such adjustments are contested by the nursing  
21 facility, and the median or fiftieth percentile cost for each peer  
22 group shall be determined. Operational rates for facilities within  
23 each peer group for the first year of the biennium shall be set at the  
24 lower of the facility's adjusted per patient day operational cost from  
25 the prior report period or the median cost for the facility's peer  
26 group plus twenty-five percent. This rate shall be reduced or inflated  
27 as authorized by RCW 74.46.420.

28 (3) A nursing facility's operational rate for the second year of  
29 each biennium shall be that facility's rate as of July 1 of the first  
30 year of that biennium reduced or inflated as authorized by RCW  
31 74.46.420. The alternating procedures prescribed in this section for  
32 a facility's two July 1 operational rates occurring within each  
33 biennium shall be followed in the same order for each succeeding  
34 biennium.

35 (4) Median costs for peer groups shall be calculated initially as  
36 provided in this chapter on the basis of the most recent adjusted cost  
37 information available to the department prior to the calculation of the  
38 new rate for July 1 of the first fiscal year of each biennium,

1 regardless of whether the adjustments are contested or subject to  
2 pending administrative or judicial review. Median costs for peer  
3 groups shall be recalculated as provided in this chapter on the basis  
4 of the most recent adjusted cost information available to the  
5 department on October 31 of the first fiscal year of each biennium, and  
6 shall apply retroactively to the prior July 1 rate, regardless of  
7 whether the adjustments are contested or subject to pending  
8 administrative or judicial review. Median costs shall not be adjusted  
9 to reflect subsequent administrative or judicial rulings, whether final  
10 or not.

11 **Sec. 16.** RCW 74.46.510 and 1980 c 177 s 51 are each amended to  
12 read as follows:

13 (1) The property cost center rate for each facility shall be  
14 determined by dividing the sum of the reported allowable prior period  
15 actual depreciation (~~costs~~), subject to RCW 74.46.310 through  
16 74.46.380, adjusted for any capitalized additions or replacements  
17 approved by the department, and the retained savings from such cost  
18 center, as provided in RCW 74.46.180, by the total patient days for the  
19 facility in the prior period. If a capitalized addition or retirement  
20 of an asset will result in a different licensed bed capacity during the  
21 ensuing period, the prior period total patient days used in computing  
22 the property cost center rate shall be adjusted to anticipated patient  
23 day level.

24 (2) A nursing facility's property rate shall be rebased annually,  
25 effective July 1, in accordance with this section regardless of whether  
26 the rate is for the first or second year of the biennium.

27 (3) When a certificate of need for a new facility is requested, the  
28 department, in reaching its decision, shall take into consideration  
29 per-bed land and building construction costs for the facility which  
30 shall not exceed a maximum to be established by the secretary.

31 **Sec. 17.** RCW 74.46.530 and 1991 sp.s. c 8 s 17 are each amended to  
32 read as follows:

33 (1) The department shall establish for (~~individual facilities~~)  
34 each medicaid nursing facility a return on investment (~~allowances~~)  
35 rate composed of two parts: A financing allowance and a variable  
36 return allowance. A facility's return on investment rate shall be  
37 rebased annually, effective July 1, in accordance with this section,

1 regardless of whether the rate is for the first or second year of the  
2 biennium.

3 (a) The financing allowance shall be determined by multiplying the  
4 net invested funds of each facility by .10, and dividing by the  
5 contractor's total patient days from the most recent cost report  
6 period. If a capitalized addition or retirement of an asset will  
7 result in a different licensed bed capacity during the ensuing period,  
8 the prior period total patient days used in computing the financing and  
9 variable return allowances shall be adjusted to the anticipated patient  
10 day level.

11 (b) In computing the portion of net invested funds representing the  
12 net book value of tangible fixed assets, the same assets, depreciation  
13 bases, lives, and methods referred to in RCW 74.46.330, 74.46.350,  
14 74.46.360, 74.46.370, and 74.46.380, including owned and leased assets,  
15 shall be utilized, except that the capitalized cost of land upon which  
16 the facility is located and such other contiguous land which is  
17 reasonable and necessary for use in the regular course of providing  
18 patient care shall also be included. Subject to provisions and  
19 limitations contained in this chapter, for land purchased by owners or  
20 lessors before July 18, 1984, capitalized cost of land shall be the  
21 buyer's capitalized cost. For all partial or whole rate periods after  
22 July 17, 1984, if the land is purchased after July 17, 1984,  
23 capitalized cost shall be that of the owner of record on July 17, 1984,  
24 or buyer's capitalized cost, whichever is lower. In the case of leased  
25 facilities where the net invested funds are unknown or the contractor  
26 is unable to provide necessary information to determine net invested  
27 funds, the secretary shall have the authority to determine an amount  
28 for net invested funds based on an appraisal conducted according to RCW  
29 74.46.360(1).

30 (c) In determining the variable return allowance:

31 (i) Every two years at the start of each new biennium, the  
32 department, without utilizing peer groups, will first rank all  
33 facilities in numerical order from highest to lowest according to their  
34 ((average per diem)) per patient day adjusted allowable costs for ((the  
35 sum of the administration and operations and property cost centers))  
36 nursing services, food, administrative, and operational costs combined  
37 for the previous cost report period.

38 (ii) The department shall then compute the variable return  
39 allowance by multiplying the appropriate percentage amounts, which

1 shall not be less than one percent and not greater than four percent,  
2 by the (~~total prospective rate for each facility, as determined in RCW~~  
3 ~~74.46.450 through 74.46.510~~) sum of the facility's nursing services,  
4 food, administrative, and operational rate components. The percentage  
5 amounts will be based on groupings of facilities according to the  
6 rankings (~~as established~~) prescribed in (i) of this subsection  
7 (1)(c). The percentages calculated and assigned will remain the same  
8 for the next variable return allowance paid in the second year of the  
9 biennium. Those groups of facilities with lower per diem costs shall  
10 receive higher percentage amounts than those with higher per diem  
11 costs.

12 (d) The sum of the financing allowance and the variable return  
13 allowance shall be the return on investment rate for each facility, and  
14 shall be added to the prospective rates of each contractor as  
15 determined in RCW 74.46.450 through 74.46.510.

16 (e) In the case of a facility which was leased by the contractor as  
17 of January 1, 1980, in an arm's-length agreement, which continues to be  
18 leased under the same lease agreement, and for which the annualized  
19 lease payment, plus any interest and depreciation expenses associated  
20 with contractor-owned assets, for the period covered by the prospective  
21 rates, divided by the contractor's total patient days, minus the  
22 property cost center determined according to RCW 74.46.510, is more  
23 than the return on investment (~~allowance~~) rate determined according  
24 to subsection (1)(d) of this section, the following shall apply:

25 (i) The financing allowance shall be recomputed substituting the  
26 fair market value of the assets as of January 1, 1982, as determined by  
27 the department of general administration through an appraisal  
28 procedure, less accumulated depreciation on the lessor's assets since  
29 January 1, 1982, for the net book value of the assets in determining  
30 net invested funds for the facility. A determination by the department  
31 of general administration of fair market value shall be final unless  
32 the procedure used to make such determination is shown to be arbitrary  
33 and capricious.

34 (ii) The sum of the financing allowance computed under subsection  
35 (1)(e)(i) of this section and the variable allowance shall be compared  
36 to the annualized lease payment, plus any interest and depreciation  
37 (~~expenses~~) associated with contractor-owned assets, for the period  
38 covered by the prospective rates, divided by the contractor's total  
39 patient days, minus the property cost center rate determined according

1 to RCW 74.46.510. The lesser of the two amounts shall be called the  
2 alternate return on investment ((allowance)) rate.

3 (iii) The return on investment ((allowance)) rate determined  
4 according to subsection (1)(d) of this section or the alternate return  
5 on investment ((allowance)) rate, whichever is greater, shall be the  
6 return on investment ((allowance)) rate for the facility and shall be  
7 added to the prospective rates of the contractor as determined in RCW  
8 74.46.450 through 74.46.510.

9 (f) In the case of a facility which was leased by the contractor as  
10 of January 1, 1980, in an arm's-length agreement, if the lease is  
11 renewed or extended pursuant to a provision of the lease, the treatment  
12 provided in subsection (1)(e) of this section shall be applied except  
13 that in the case of renewals or extensions made subsequent to April 1,  
14 1985, reimbursement for the annualized lease payment shall be no  
15 greater than the reimbursement for the annualized lease payment for the  
16 last year prior to the renewal or extension of the lease.

17 ~~(2) ((In the event that the department of health and human services  
18 disallows the application of the return on investment allowances to  
19 nonprofit facilities, the department shall modify the measurements of  
20 net invested funds used for computing individual facility return on  
21 investment allowances as follows:— Net invested funds for each  
22 nonprofit facility shall be multiplied by one minus the ratio of equity  
23 funds to the net invested funds of all nonprofit facilities.~~

24 ~~(3))~~ Each biennium, beginning in 1985, the secretary shall review  
25 the adequacy of return on investment ((allowances)) rates in relation  
26 to anticipated requirements for maintaining, reducing, or expanding  
27 nursing care capacity. The secretary shall report the results of such  
28 review to the legislature and make recommendations for adjustments in  
29 the return on investment rates utilized in this section, if  
30 appropriate.

31 NEW SECTION. **Sec. 18.** By November 15, 1994, the legislative  
32 budget committee shall complete a study of the nursing home  
33 reimbursement system. The study shall include an assessment of the  
34 financial stability of the nursing home industry, to the extent  
35 sufficient information is available from the industry and other sources  
36 to make such an assessment; an evaluation of the adequacy of the  
37 nursing home reimbursement system for promoting cost-effective, quality  
38 care; and, if appropriate, recommendations for improving the

1 reimbursement system's capacity to promote sufficient availability of  
2 efficient and quality care. In conducting the study, the legislative  
3 budget committee shall consult with the nursing home industry, consumer  
4 groups, health care professionals, and the department of social and  
5 health services.

6 NEW SECTION. **Sec. 19.** The following acts or parts of acts are  
7 each repealed:

8 (1) RCW 74.46.260 and 1980 c 177 s 26; and

9 (2) RCW 74.46.495 and 1983 1st ex.s. c 67 s 26.

10 NEW SECTION. **Sec. 20.** This act is necessary for the immediate  
11 preservation of the public peace, health, or safety, or support of the  
12 state government and its existing public institutions, and shall take  
13 effect July 1, 1993.

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