

1 5827 NOT ADOPT 4/18/91.3775

2 **SB 5827** - S AMD

3 By Senators Niemi, Gaspard, Kreidler, Snyder, Wojahn, Moore,  
4 Murray, Vognild, Talmadge and Sutherland

5 NOT ADOPTED 4/1/8/91 - Voice Vote

6 Strike everything after the enacting clause and insert the  
7 following:

8 "Sec. I. RCW 18.51.050 and 1989 c 372 s 1 are each amended to  
9 read as follows:

10 Upon receipt of an application for license, the department  
11 shall issue a license if the applicant and the nursing home  
12 facilities meet the requirements established under this chapter,  
13 except that the department shall issue a temporary license to a  
14 court-appointed receiver for a period not to exceed six months from  
15 the date of appointment. Prior to the issuance or renewal of the  
16 license, the licensee shall pay a license fee as established by the  
17 department. No fee shall be required of government operated  
18 institutions or court-appointed receivers. All licenses issued  
19 under the provisions of this chapter shall expire on a date to be  
20 set by the department, but no license issued pursuant to this  
21 chapter shall exceed thirty-six months in duration. When a change  
22 of ownership occurs, the entity becoming the licensed operating  
23 entity of the facility shall pay a fee established by the  
24 department at the time of application for the license. The  
25 previously determined date of license expiration shall not change.

1 ((The department shall conduct, without charge to the nursing  
2 homes, one annual licensing and certification survey per calendar  
3 year and one postsurvey visit.

4 For all additional surveys required beyond the first  
5 postsurvey visit, nursing homes shall pay an inspection fee of  
6 twelve dollars per bed to the department. The inspection fee shall  
7 be due within thirty days of the completion date of the  
8 postsurvey.)) The department shall establish license fees at an  
9 amount adequate to reimburse the department in full for all costs  
10 of its licensing activities for nursing homes, adjusted to cover  
11 the department's cost of reimbursing such fees through medicaid.

12 All applications and fees for renewal of the license shall be  
13 submitted to the department not later than thirty days prior to the  
14 date of expiration of the license. All applications and fees for  
15 change of ownership licenses shall be submitted to the department  
16 not later than sixty days before the date of the proposed change of  
17 ownership. Each license shall be issued only to the operating  
18 entity and those persons named in the license application. The  
19 license is valid only for the operation of the facility at the  
20 location specified in the license application. Licenses are not  
21 transferable or assignable. Licenses shall be posted in a  
22 conspicuous place on the licensed premises." "

23 "Sec. II. RCW 74.46.660 and 1980 c 177 s 66 are each amended  
24 to read as follows:

25 In order to participate in the prospective cost-related

1 reimbursement system established by this chapter, the person or  
2 legal organization responsible for operation of a facility shall:

3 (1) Obtain a state certificate of need and/or federal capital  
4 expenditure review (section 1122) approval pursuant to chapter  
5 70.38 RCW and Part 100, Title 42 CFR where required;

6 (2) Hold the appropriate current license;

7 (3) Hold current Title XIX certification;

8 (4) Hold a current contract to provide services under this  
9 chapter; ((and))

10 (5) Comply with all provisions of the contract and all  
11 application regulations, including but not limited to the  
12 provisions of this chapter; and

13 (6) If eligible for such certification, obtain and maintain  
14 medicare certification, under Title XVIII of the social security  
15 act, 42 U.S.C. Sec. 1395, as amended, for an appropriate portion,  
16 as determined by the facility, of the facility's licensed beds in  
17 order to assure access for medicare residents."

18 "Sec. III. RCW 74.46.410 and 1989 c 372 s 2 are each amended  
19 to read as follows:

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

23 (2) Unallowable costs include, but are not limited to, the  
24 following:

25 (a) Costs of items or services not covered by the medical care

1 program. Costs of such items or services will be unallowable even  
2 if they are indirectly reimbursed by the department as the result  
3 of an authorized reduction in patient contribution;

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

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

15 (d) Costs associated with a construction or acquisition  
16 project requiring certificate of need approval pursuant to chapter  
17 70.38 RCW if such approval was not obtained;

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

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

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

26 (h) Costs resulting from transactions or the application of

1 accounting methods which circumvent the principles of the cost-  
2 related reimbursement system set forth in this chapter;

3 (i) Costs applicable to services, facilities, and supplies  
4 furnished by a related organization in excess of the lower of the  
5 cost to the related organization or the price of comparable  
6 services, facilities, or supplies purchased elsewhere;

7 (j) Bad debts of non-Title XIX recipients. Bad debts of Title  
8 XIX recipients are allowable if the debt is related to covered  
9 services, it arises from the recipient's required contribution  
10 toward the cost of care, the provider can establish that reasonable  
11 collection efforts were made, the debt was actually uncollectible  
12 when claimed as worthless, and sound business judgment established  
13 that there was no likelihood of recovery at any time in the future;

14 (k) Charity and courtesy allowances;

15 (l) Cash, assessments, or other contributions, excluding dues,  
16 to charitable organizations, professional organizations, trade  
17 associations, or political parties, and costs incurred to improve  
18 community or public relations;

19 (m) Vending machine expenses;

20 (n) Expenses for barber or beautician services not included in  
21 routine care;

22 (o) Funeral and burial expenses;

23 (p) Costs of gift shop operations and inventory;

24 (q) Personal items such as cosmetics, smoking materials,  
25 newspapers and magazines, and clothing, except those used in  
26 patient activity programs;

- 1 (r) Fund-raising expenses, except those directly related to  
2 the patient activity program;
- 3 (s) Penalties and fines;
- 4 (t) Expenses related to telephones, televisions, radios, and  
5 similar appliances in patients' private accommodations;
- 6 (u) Federal, state, and other income taxes;
- 7 (v) Costs of special care services except where authorized by  
8 the department;
- 9 (w) Expenses of key-man insurance and other insurance or  
10 retirement plans not made available to all employees;
- 11 (x) Expenses of profit-sharing plans;
- 12 (y) Expenses related to the purchase and/or use of private or  
13 commercial airplanes which are in excess of what a prudent  
14 contractor would expend for the ordinary and economic provision of  
15 such a transportation need related to patient care;
- 16 (z) Personal expenses and allowances of owners or relatives;
- 17 (aa) All expenses of maintaining professional licenses or  
18 membership in professional organizations;
- 19 (bb) Costs related to agreements not to compete;
- 20 (cc) Amortization of goodwill;
- 21 (dd) Expenses related to vehicles which are in excess of what  
22 a prudent contractor would expend for the ordinary and economic  
23 provision of transportation needs related to patient care;
- 24 (ee) Legal and consultant fees in connection with a fair  
25 hearing against the department where a decision is rendered in  
26 favor of the department or where otherwise the determination of the

1 department stands;

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

4 (gg) Lease acquisition costs and other intangibles not related  
5 to patient care;

6 (hh) All rental or lease costs other than those provided in  
7 RCW 74.46.300 on and after the effective date of RCW 74.46.510 and  
8 74.46.530;

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

13 (jj) Costs and fees otherwise allowable for legal services,  
14 whether purchased, allocated by a home office, regional office or  
15 management company, or performed by the contractor or employees of  
16 the contractor, in excess of the eighty-fifth percentile of such  
17 costs reported by all contractors for the most recent cost report  
18 period: PROVIDED, That this limit shall not apply if a contractor  
19 has not exceeded this percentile in any of the preceding three  
20 annual cost report periods;

21 (kk) Costs and fees otherwise allowable for accounting and  
22 bookkeeping services, whether purchased, allocated by a home  
23 office, regional office or management company, or performed by the  
24 contractor or employees of the contractor, in excess of the eighty-  
25 fifth percentile of such costs reported by all contractors for the  
26 most recent cost report period: PROVIDED, That this limit shall

1 not apply if a contractor has not exceeded this percentile in any  
2 of the preceding three annual cost report periods;

3 (11) Compensation paid for any purchased direct nursing  
4 service in excess of the costs the facility would have incurred for  
5 regular service employees."

6 "Sec. IV. RCW 74.46.481 and 1990 c 207 s 1 are each amended  
7 to read as follows:

8 (1) The nursing services cost center shall include all costs  
9 related to the direct provision of nursing and related care,  
10 including fringe benefits and payroll taxes for the nursing and  
11 related care personnel. For rates effective for state fiscal year  
12 1984, the department shall adopt by administrative rule a  
13 definition of "related care" which shall incorporate, but not  
14 exceed services reimbursable as of June 30, 1983. For rates  
15 effective for state fiscal year 1985, the definition of related  
16 care shall include ancillary care. For rates effective after June  
17 30, 1991, nursing services costs, as reimbursed within this chapter  
18 and as tested for reasonableness within this section, shall not  
19 include costs of any purchased direct nursing service in excess of  
20 the costs the facility would have incurred for regular service  
21 employees.

22 (2) The department shall adopt by administrative rules a  
23 method for establishing a nursing services cost center rate  
24 consistent with the principles stated in this section.

25 (3) Utilizing regression or other statistical technique, the



1 department shall determine a reasonable limit on facility nursing  
2 staff taking into account facility patient characteristics. For  
3 purposes of this section, facility nursing staff refers to  
4 registered nurses, licensed practical nurses and nursing assistants  
5 employed by the facility or obtained through temporary labor  
6 contract arrangements. Effective January 1, 1988, the hours  
7 associated with the training of nursing assistants and the  
8 supervision of that training for nursing assistants shall not be  
9 included in the calculation of facility nursing staff. In  
10 selecting a measure of patient characteristics, the department  
11 shall take into account:

12 (a) The correlation between alternative measures and facility  
13 nursing staff; and

14 (b) The cost of collecting information for and computation of  
15 a measure.

16 If regression is used, the limit shall be set at predicted nursing  
17 staff plus 1.75 regression standard errors. If another statistical  
18 method is utilized, the limit shall be set at a level corresponding  
19 to 1.75 standard errors above predicted staffing computed according  
20 to a regression procedure.

21 (4) No facility shall receive reimbursement for nursing staff  
22 levels in excess of the limit, except that, if a facility was  
23 reimbursed for a nursing staff level in excess of the limit as of  
24 June 30, 1983, the facility may chose to continue to receive its  
25 June, 1983 nursing services rate plus any adjustments in rates,  
26 such as adjustments for economic trends, made available to all

1 facilities. However, nursing staff levels established under  
2 subsection (3) of this section shall not apply to the nursing  
3 services cost center reimbursement rate for the pilot facility  
4 especially designed to meet the needs of persons living with AIDS  
5 as defined by RCW 70.24.017 and specifically authorized for this  
6 purpose under the 1989 amendment to the Washington state health  
7 plan [1989 1st ex.s. c 9]. The reasonableness limit established  
8 pursuant to this subsection shall remain in effect for the period  
9 July 1, 1983 through June 30, 1985. At that time the department may  
10 revise the measure of patient characteristics or method used to  
11 establish the limit.

12 (5) The department shall select an index of cost increase  
13 relevant to the nursing and related services cost area. In the  
14 absence of a more representative index, the department shall use  
15 the medical care component index as maintained by the United States  
16 bureau of labor statistics.

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  
20 nursing services cost center between the facility's most recent  
21 cost reporting period and the next prior cost reporting period.

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

1 appropriation.

2 (b) If the percentage cost increase for a facility exceeds the  
3 increase in the selected index, the department shall limit the cost  
4 used for setting the facility's rate in the nursing services cost  
5 area to a level reflecting the increase in the selected index.

6 (7) If the facility's nursing staff level exceeds the  
7 reasonableness limit established in subsection (3) of this section,  
8 the department shall determine the increase for all items included  
9 in the nursing services cost center between the facility's most  
10 recent cost reporting period and the next prior cost reporting  
11 period.

12 (a) If the percentage cost increase for a facility is below  
13 the increase in the index selected pursuant to subsection (5) of  
14 this section, the facility's reimbursement rate in the nursing cost  
15 center shall equal the facility's cost from the most recent cost  
16 reporting period adjusted downward to reflect the limit on nursing  
17 staff, plus any allowance for inflation provided by legislative  
18 appropriation subject to the provisions of subsection (4) of this  
19 section.

20 (b) If the percentage cost increase for a facility exceeds the  
21 increase in the selected index, the department shall limit the cost  
22 used for setting the facility's rate in the nursing services cost  
23 center to a level reflecting the nursing staff limit and the cost  
24 increase limit, subject to the provisions of subsection (4) of this  
25 section, plus any allowance for inflation provided by legislative  
26 appropriation.

1           (8) Prospective rates for the nursing services cost center for  
2 state fiscal year 1992 shall not be subject to the cost index lid  
3 in subsections (5), (6), and (7) of this section. The total of all  
4 rates increases for the nursing services cost center for any  
5 nursing facility, including prospective rate increases authorized  
6 pursuant to RCW 74.46.495 and 74.46.460 but excluding costs  
7 associated with new federal regulatory requirements, during this  
8 period shall not exceed fifty percent of the average rate paid  
9 during fiscal year 1991 for the nursing services cost center for  
10 that nursing facility.

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

24           ~~((+9))~~ (10) The department shall establish a method for  
25 identifying patients with exceptional care requirements and a  
26 method for establishing or negotiating on a consistent basis rates

1 for such patients.

2 ((+10+)) (11) The department, in consultation with interested  
3 parties, shall adopt rules to establish the criteria the department  
4 will use in reviewing any requests by a contractor for a  
5 prospective rate adjustment to be used to increase the number of  
6 nursing staff. These rules shall also specify the time period for  
7 submission and review of staffing requests: PROVIDED, That a  
8 decision on a staffing request shall not take longer than sixty  
9 days from the date the department receives such a complete request.  
10 In establishing the criteria, the department may consider, but is  
11 not limited to, the following:

12 (a) Increases in acuity levels of contractors' residents;

13 (b) Staffing patterns for similar facilities;

14 (c) Physical plant of contractor; and

15 (d) Survey, inspection of care, and department consultation  
16 results."

17 "**Sec. V.** RCW 74.46.530 and 1985 c 361 s 17 are each amended  
18 to read as follows:

19 (1) The department shall establish for individual facilities  
20 return on investment allowances composed of two parts: A financing  
21 allowance and a variable return allowance.

22 (a) The financing allowance shall be determined by multiplying  
23 the net invested funds of each facility by .11 and dividing by the  
24 contractor's total patient days. If a capitalized addition or  
25 retirement of an asset will result in a different licensed bed

1 capacity during the ensuing period, the prior period total patient  
2 days used in computing the financing and variable return allowances  
3 shall be adjusted to the anticipated patient day level.

4 (b) In computing the portion of net invested funds  
5 representing the net book value of tangible fixed assets, the same  
6 assets, depreciation bases, lives, and methods referred to in RCW  
7 74.46.330, 74.46.350, 74.46.360, and 74.46.370, including owned and  
8 leased assets, shall be utilized, except that the capitalized cost  
9 of land upon which the facility is located and such other  
10 contiguous land which is reasonable and necessary for use in the  
11 regular course of providing patient care shall also be included.  
12 In the case of leased facilities where the net invested funds are  
13 unknown or the contractor is unable to provide necessary  
14 information to determine net invested funds, the secretary shall  
15 have the authority to determine an amount for net invested funds  
16 based on an appraisal conducted according to RCW 74.46.360(1).

17 (c) In determining the variable return allowance:

18 (i) The department will first rank all facilities in numerical  
19 order from highest to lowest according to their average per diem  
20 allowable costs for the sum of the administration and operations  
21 and property cost centers for the previous cost report period.

22 (ii) The department shall then compute the variable return  
23 allowance by multiplying the appropriate percentage amounts, which  
24 shall not be less than one percent and not greater than four  
25 percent, by the total prospective rate for each facility, as  
26 determined in RCW 74.46.450 through 74.46.510. Beginning on July

1 1, 1992, the percentage amounts shall range from zero to not  
2 greater than three percent. The percentage amounts will be based  
3 on groupings of facilities according to the rankings as established  
4 in subparagraph (1)(b)(i) of this section. Those groups of  
5 facilities with lower per diem costs shall receive higher  
6 percentage amounts than those with higher per diem costs.

7 (d) The sum of the financing allowance and the variable return  
8 allowance shall be the return on investment for each facility, and  
9 shall be added to the prospective rates of each contractor as  
10 determined in RCW 74.46.450 through 74.46.510.

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

21 (i) The financing allowance shall be recomputed substituting  
22 the fair market value of the assets as of January 1, 1982, as  
23 determined by the department of general administration through an  
24 appraisal procedure, less accumulated depreciation on the lessor's  
25 assets since January 1, 1982, for the net book value of the assets  
26 in determining net invested funds for the facility. A

1 determination by the department of general administration of fair  
2 market value shall be final unless the procedure used to make such  
3 determination is shown to be arbitrary and capricious.

4 (ii) The sum of the financing allowance computed under  
5 subsection (1)(e)(i) of this section and the variable allowance  
6 shall be compared to the annualized lease payment, plus any  
7 interest and depreciation expenses associated with contractor-owned  
8 assets, for the period covered by the prospective rates, divided by  
9 the contractor's total patient days, minus the property cost center  
10 rate determined according to RCW 74.46.510. The lesser of the two  
11 amounts shall be called the alternate return on investment  
12 allowance.

13 (iii) The return on investment allowance determined according  
14 to subsection (1)(d) of this section or the alternate return on  
15 investment allowance, whichever is greater, shall be the return on  
16 investment allowance for the facility and shall be added to the  
17 prospective rates of the contractor as determined in RCW 74.46.450  
18 through 74.46.510.

19 (f) In the case of a facility which was leased by the  
20 contractor as of January 1, 1980, in an arm's-length agreement, if  
21 the lease is renewed or extended pursuant to a provision of the  
22 lease, the treatment provided in subsection (1)(e) of this section  
23 shall be applied except that in the case of renewals or extensions  
24 made subsequent to April 1, 1985, reimbursement for the annualized  
25 lease payment shall be no greater than the reimbursement for the  
26 annualized lease payment for the last year prior to the renewal or



1 extension of the lease.

2 (2) In the event that the department of health and human  
3 services disallows the application of the return on investment  
4 allowances to nonprofit facilities, the department shall modify the  
5 measurements of net invested funds used for computing individual  
6 facility return on investment allowances as follows: Net invested  
7 funds for each nonprofit facility shall be multiplied by one minus  
8 the ratio of equity funds to the net invested funds of all  
9 nonprofit facilities.

10 (3) Each biennium, beginning in 1985, the secretary shall  
11 review the adequacy of return on investment allowances in relation  
12 to anticipated requirements for maintaining, reducing, or expanding  
13 nursing care capacity. The secretary shall report the results of  
14 such review to the legislature and make recommendations for  
15 adjustments in the return on investment rates utilized in this  
16 section, if appropriate."

17 **SB 5827** - S AMD

18 By Senators Niemi, Gaspard, Kreidler, Snyder, Wojahn, Moore,  
19 Murray, Vognild, Talmadge and Sutherland

20 NOT ADOPTED 4/18/91 - Voice Vote

21 On page 1, line 1 of the title, after "homes;" strike the  
22 remainder of the title and insert "and amending RCW 18.51.050,  
23 74.46.660, 74.46.410, 74.46.481, and 74.46.530."