H-2266.1

SUBSTITUTE HOUSE BILL 1123

State of Washington 52nd Legislature 1991 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Braddock, Franklin and Orr; by request of Dept. of Social and Health Services).

Read first time March 6, 1991.

AN ACT Relating to compliance with federal requirements concerning land, depreciable assets, and resident finances; amending RCW 74.46.360 and 74.46.530; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 74.46.360 and 1989 c 372 s 14 are each amended to read as follows:

(1) The depreciation base shall be the historical cost of the contractor or lessor, when the assets are leased by the contractor, in acquiring the asset in an arm's-length transaction and preparing it for use, less goodwill, and less accumulated depreciation which has been incurred during periods that the assets have been used in or as a facility by any contractor, such accumulated depreciation to be measured in accordance with subsections (2), (3), and (4) of this section and RCW 74.46.350 and 74.46.370. If the department challenges the historical cost of an asset, or if the contractor cannot or will

not provide the historical costs, the department will have the department of general administration, through an appraisal procedure, determine the fair market value of the assets at the time of purchase. The depreciation base of the assets will not exceed such fair market value.

(2) The historical cost of donated assets, or of assets received through testate or intestate distribution, shall be the lesser of:

(a) Fair market value at the date of donation or death; or

(b) The historical cost base of the owner last contracting with the department, if any.

(3) Estimated salvage value of acquired, donated, or inherited assets shall be deducted from historical cost where the straight-line or sum-of-the-years' digits method of depreciation is used.

(4) (a) Where depreciable assets are acquired that were used in the medical care program subsequent to January 1, 1980, the depreciation base of the assets will not exceed the net book value which did exist or would have existed had the assets continued in use under the previous contract with the department; except that depreciation shall not be assumed to accumulate during periods when the assets were not in use in or as a facility.

(b) The provisions of (a) of this subsection shall not apply to the most recent arm's-length acquisition if it occurs at least ten years after the ownership of the assets has been previously transferred in an arm's-length transaction nor to the first arm's-length acquisition that occurs after January 1, 1980, for facilities participating in the medical care program prior to January 1, 1980. The new depreciation base for such acquisitions shall not exceed the fair market value of the assets as determined by the department of general administration through an appraisal procedure. A determination by the department of general administration of fair market value shall be final unless the procedure used to make such determination is shown to be arbitrary and capricious.

(i) This subsection is inoperative for any transfer of ownership of any asset occurring on or after July 18, 1984, leaving (a) of this subsection to apply alone to such transfers((~~: PROVIDED, HOWEVER, That~~)). However this subsection shall apply to transfers of ownership of assets occurring prior to January 1, 1985, if the costs of such assets have never been reimbursed under medicaid cost reimbursement on an owner-operated basis or as a related-party lease((~~: PROVIDED FURTHER, That for~~)).

(ii) Any contractor that can document in writing an enforceable agreement for the purchase of a nursing home dated prior to July 18, 1984, and submitted to the department prior to January 1, 1988, the depreciation base of the nursing home, for rates established after July 18, 1984, shall not exceed the fair market value of the assets at the date of purchase as determined by the department of general administration through an appraisal procedure.

(iii) For medicaid cost reimbursement purposes, an agreement to purchase a nursing home dated prior to July 18, 1984, is enforceable, even though such agreement contains no legal description of the real property involved, notwithstanding the statute of frauds or any other provision of law.

(c) The provisions of (a) and (b) of this subsection shall not apply to an arm's-length transaction that occurs on or after July 1, 1991. When land and depreciable assets are acquired in an arm's-length transaction on or after July 1, 1991, then the depreciable base of those assets shall be the lesser of the following amounts:

(i) The historical cost to the buyer; or

(ii) The historical cost to the seller increased by the lesser of the following two percentages:

(A) One-half of the percentage increase as measured over the same period of time in the Dodge Construction Systems Costs for Nursing Homes, applied in the aggregate with respect to those facilities which have undergone a change of ownership during the fiscal year; or

(B) One-half of the percentage increase as measured over the same period of time in the Consumer Price Index for All Urban Consumers (United States City average).

(d) In the case of assets leased by the same contractor since January 1, 1980, in an arm's-length lease, and purchased by the lessee/contractor, the lessee/contractor shall have the option:

(i) To have the provisions of subsection (b) of this section apply to the purchase; or

(ii) To have the reimbursement for property and return on investment continue to be calculated pursuant to the provisions contained in RCW 74.46.530(1) ((~~(e) and~~)) (f) and (g) based upon the provisions of the lease in existence on the date of the purchase, but only if the purchase date meets one of the following criteria:

(A) The purchase date is after the lessor has declared bankruptcy or has defaulted in any loan or mortgage held against the leased property;

(B) The purchase date is within one year of the lease expiration or renewal date contained in the lease;

(C) The purchase date is after a rate setting for the facility in which the reimbursement rate set pursuant to this chapter no longer is equal to or greater than the actual cost of the lease; or

(D) The purchase date is within one year of any purchase option in existence on January 1, 1988.

((~~(d)~~)) (e) Where depreciable assets are acquired from a related organization, the contractor's depreciation base shall not exceed the base the related organization had or would have had under a contract with the department.

((~~(e)~~)) (f) Where the depreciable asset is a donation or distribution between related organizations, the base shall be the lesser of (i) fair market value, less salvage value, or (ii) the depreciation base the related organization had or would have had for the asset under a contract with the department.

Sec. 2. RCW 74.46.530 and 1985 c 361 s 17 are each amended to read as follows:

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

(a) The financing allowance shall be determined by multiplying the net invested funds of each facility by .11, and dividing by the contractor's total patient days. If a capitalized addition or retirement of an asset will result in a different licensed bed capacity during the ensuing period, the prior period total patient days used in computing the financing and variable return allowances shall be adjusted to the anticipated patient day level.

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

(c) If land and depreciable assets that are eligible to be included in determining the amount of net invested funds was acquired in an arm's-length transaction on or after July 1, 1991, then the capitalized cost of that land shall be the lesser of the following amounts:

(i) The historical cost to the buyer; or

(ii) The historical cost to the seller, increased by the lesser of the following two percentages:

(A) One-half of the percentage increase as measured over the same period of time in the Dodge Construction Systems Costs for Nursing Homes, applied in the aggregate with respect to those facilities which have undergone a change of ownership during the fiscal year; or

(B) One-half of the percentage increase as measured over the same period of time in the Consumer Price Index for All Urban Consumers (United States City average).

(d) In determining the variable return allowance:

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

(ii) The department shall then compute the variable return allowance by multiplying the appropriate percentage amounts, which shall not be less than one percent and not greater than four percent, by the total prospective rate for each facility, as determined in RCW 74.46.450 through 74.46.510. The percentage amounts will be based on groupings of facilities according to the rankings as established in ((~~subparagraph (1)(b)(i) of this section~~)) (d)(i) of this subsection. Those groups of facilities with lower per diem costs shall receive higher percentage amounts than those with higher per diem costs.

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

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

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

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

(iii) The return on investment allowance determined according to ((~~subsection (1)(d) of this section~~)) <u>(e) of this subsection</u> or the alternate return on investment allowance, whichever is greater, shall be the return on investment allowance for the facility and shall be added to the prospective rates of the contractor as determined in RCW 74.46.450 through 74.46.510.

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

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

(3) Each biennium, beginning in 1985, the secretary shall review the adequacy of return on investment allowances in relation to anticipated requirements for maintaining, reducing, or expanding nursing care capacity. The secretary shall report the results of such review to the legislature and make recommendations for adjustments in

the return on investment rates utilized in this section, if appropriate.

NEW SECTION. **Sec. 3.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991.