

HOUSE BILL 1249

State of Washington 52nd Legislature 1991 Regular Session

By Representatives Prentice, D. Sommers, R. Meyers, Sprenkle, Anderson and Silver.

Read first time January 23, 1991. Referred to Committee on Health Care\Appropriations.

1 AN ACT Relating to the regulation of nursing pools providing
2 temporary nursing services to nursing homes certified under Titles
3 XVIII and XIX of the federal social security act; amending RCW
4 74.46.020; adding a new section to chapter 74.46 RCW; creating a new
5 section; providing an effective date; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that temporary
8 nursing services provide a vital service to nursing homes certified
9 under Titles XVIII and XIX of the federal social security act. The
10 legislature further finds that Title XVIII and XIX nursing homes are
11 unable to absorb the extreme cost of temporary nursing services under
12 the current medicare and medicaid reimbursement system. This inability
13 to absorb the cost of temporary nursing services has a direct impact on
14 the quality of care of nursing home residents. Thus, it is necessary
15 to regulate the rates charged by nursing pools providing temporary

1 nursing services to nursing homes certified under Titles XVIII and XIX
2 of the federal social security act so that nursing homes can continue
3 to meet the demands of providing high quality patient care.

4 **Sec. 2.** RCW 74.46.020 and 1989 c 372 s 17 are each amended to read
5 as follows:

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

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

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

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

22 (4) "Arm's-length transaction" means a transaction resulting from
23 good-faith bargaining between a buyer and seller who are not related
24 organizations and have adverse positions in the market place. Sales or
25 exchanges of nursing home facilities among two or more parties in which
26 all parties subsequently continue to own one or more of the facilities
27 involved in the transactions shall not be considered as arm's-length
28 transactions for purposes of this chapter. Sale of a nursing home
29 facility which is subsequently leased back to the seller within five

1 years of the date of sale shall not be considered as an arm's-length
2 transaction for purposes of this chapter.

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

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

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

10 (8) "Beneficial owner" means:

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

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

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

17 (b) Any person who, directly or indirectly, creates or uses a
18 trust, proxy, power of attorney, pooling arrangement, or any other
19 contract, arrangement, or device with the purpose or effect of
20 divesting himself or herself of beneficial ownership of an ownership
21 interest or preventing the vesting of such beneficial ownership as part
22 of a plan or scheme to evade the reporting requirements of this
23 chapter;

24 (c) Any person who, subject to subparagraph (b) of this subsection,
25 has the right to acquire beneficial ownership of such ownership
26 interest within sixty days, including but not limited to any right to
27 acquire:

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

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

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

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

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

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

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

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

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

29 (B) The power to dispose or direct the disposition of the pledged
30 ownership interest, other than the grant of such power(s) pursuant to

1 a pledge agreement under which credit is extended and in which the
2 pledgee is a broker or dealer.

3 (9) "Capitalization" means the recording of an expenditure as an
4 asset.

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

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

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

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

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

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

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

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

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

5 (19) "Generally accepted accounting principles" means accounting
6 principles approved by the financial accounting standards board (FASB).

7 (20) "Generally accepted auditing standards" means auditing
8 standards approved by the American institute of certified public
9 accountants (AICPA).

10 (21) "Goodwill" means the excess of the price paid for a business
11 over the fair market value of all other identifiable, tangible, and
12 intangible assets acquired.

13 (22) "Historical cost" means the actual cost incurred in acquiring
14 and preparing an asset for use, including feasibility studies,
15 architect's fees, and engineering studies.

16 (23) "Imprest fund" means a fund which is regularly replenished in
17 exactly the amount expended from it.

18 (24) "Joint facility costs" means any costs which represent
19 resources which benefit more than one facility, or one facility and any
20 other entity.

21 (25) "Lease agreement" means a contract between two parties for the
22 possession and use of real or personal property or assets for a
23 specified period of time in exchange for specified periodic payments.
24 Elimination (due to any cause other than death or divorce) or addition
25 of any party to the contract, expiration, or modification of any lease
26 term in effect on January 1, 1980, or termination of the lease by
27 either party by any means shall constitute a termination of the lease
28 agreement. An extension or renewal of a lease agreement, whether or
29 not pursuant to a renewal provision in the lease agreement, shall be
30 considered a new lease agreement. A strictly formal change in the

1 lease agreement which modifies the method, frequency, or manner in
2 which the lease payments are made, but does not increase the total
3 lease payment obligation of the lessee, shall not be considered
4 modification of a lease term.

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

7 (27) "Medical care recipient" or "recipient" means an individual
8 determined eligible by the department for the services provided in
9 chapter 74.09 RCW.

10 (28) "Net book value" means the historical cost of an asset less
11 accumulated depreciation.

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

19 (30) "Nursing pool" means a person engaged in the business of
20 providing, procuring, or referring health care personnel for temporary
21 employment in health care facilities, such as licensed nurses or
22 practical nurses, and nursing assistants. "Nursing pool" does not
23 include an individual who only engages in providing his or her own
24 services.

25 (31) "Operating lease" means a lease under which rental or lease
26 expenses are included in current expenses in accordance with generally
27 accepted accounting principles.

28 (~~((31))~~) (32) "Owner" means a sole proprietor, general or limited
29 partners, and beneficial interest holders of five percent or more of a
30 corporation's outstanding stock.

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

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

8 (35) "Person" includes an individual, firm, corporation,
9 partnership, or association.

10 (~~(34)~~) (36) "Professionally designated real estate appraiser"
11 means an individual who is regularly engaged in the business of
12 providing real estate valuation services for a fee, and who is deemed
13 qualified by a nationally recognized real estate appraisal educational
14 organization on the basis of extensive practical appraisal experience,
15 including the writing of real estate valuation reports as well as the
16 passing of written examinations on valuation practice and theory, and
17 who by virtue of membership in such organization is required to
18 subscribe and adhere to certain standards of professional practice as
19 such organization prescribes.

20 (~~(35)~~) (37) "Qualified therapist" means:

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

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

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

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

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

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

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

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

9 (~~(36)~~) (38) "Questioned costs" means those costs which have been
10 determined in accordance with generally accepted accounting principles
11 but which may constitute disallowed costs or departures from the
12 provisions of this chapter or rules and regulations adopted by the
13 department.

14 (~~(37)~~) (39) "Records" means those data supporting all financial
15 statements and cost reports including, but not limited to, all general
16 and subsidiary ledgers, books of original entry, and transaction
17 documentation, however such data are maintained.

18 (~~(38)~~) (40) "Related organization" means an entity which is under
19 common ownership and/or control with, or has control of, or is
20 controlled by, the contractor.

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

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

28 (~~(39)~~) (41) "Restricted fund" means those funds the principal
29 and/or income of which is limited by agreement with or direction of the
30 donor to a specific purpose.

1 (~~(40)~~) (42) "Secretary" means the secretary of the department of
2 social and health services.

3 (~~(41)~~) (43) "Title XIX" or "Medicaid" means the 1965 amendments
4 to the social security act, P.L. 89-07, as amended.

5 (~~(42)~~) (44) "Physical plant capital improvement" means a
6 capitalized improvement that is limited to an improvement to the
7 building or the related physical plant.

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

10 (1) The department shall establish reasonable rates of payment to
11 nursing pools who contract, for temporary nursing services, with
12 nursing facilities that are certified under Titles XVIII or XIX of the
13 federal social security act.

14 (2) Annually, each nursing pool shall file with the department,
15 information required by the department to implement the requirements of
16 this section, including wages, salaries, and benefits paid to or for
17 nursing employees and the amount included in the rates as an allowance
18 for overhead and profit. For the year commencing January 1, 1992,
19 nursing pools may charge a rate not to exceed their actual costs for
20 wages and benefits paid to or for nursing employees as of September 15,
21 1991, plus an additional amount to be determined by the department for
22 overhead and profit. For the year commencing January 1, 1993, nursing
23 pools may adjust their rates consistent with the adjustments for
24 inflation determined by the legislature in the biennial budget act
25 pursuant to RCW 74.46.495.

26 (3) The department shall annually review each nursing pool's annual
27 report to determine whether the rates charged to nursing homes
28 certified under Titles XVIII and XIX of the federal social security act
29 are in conformance with this section. If a nursing pool is found to

1 have violated this section the department may require the nursing pool
2 to return funds over and above the designated rate to the nursing home.

3 (4) A pool may not bill or receive payments from a facility at a
4 rate greater than the rate established under this section.

5 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
6 preservation of the public peace, health, or safety, or support of the
7 state government and its existing public institutions, and shall take
8 effect on July 1, 1991.