
HOUSE BILL 2968

State of Washington 52nd Legislature 1992 Regular Session

By Representatives Wang, Locke, Braddock and Paris

Read first time 02/05/92. Referred to Committee on Revenue.

1 AN ACT Relating to long-term care; amending RCW 74.46.020,
2 74.46.380, 74.46.660, 74.46.481, 74.46.500, 74.46.530, and 74.46.495;
3 adding a new section to chapter 74.46 RCW; adding a new chapter to
4 Title 82 RCW; creating new sections; making appropriations; providing
5 an effective date; and providing an expiration date.

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

7 NEW SECTION. **Sec. 1.** As used in this act, "expiration date"
8 means the earliest of:

9 (1) The date that federal medicaid matching funds for the purposes
10 specified in section 17 of this act become unavailable or are
11 substantially reduced, as such date is certified by the secretary of
12 social and health services;

13 (2) The date that federal medicaid matching funds for the purposes
14 specified in section 17 of this act become unavailable or are

1 substantially reduced, as determined by a permanent injunction, court
2 order, or final court decision; or

3 (3) June 30, 1995.

4 NEW SECTION. **Sec. 2.** Unless the context clearly requires
5 otherwise, the definitions in this section apply throughout this
6 chapter.

7 (1) "Engaging in business" and "business" have the meanings given
8 in chapter 82.04 RCW.

9 (2) "Nursing home" means a facility licensed to provide inpatient
10 care under chapter 18.51 RCW.

11 (3) "Patient day" means a day of care as defined in RCW 74.46.020.

12 NEW SECTION. **Sec. 3.** In addition to any other tax, a tax is
13 imposed on every nursing home for the act or privilege of engaging in
14 business within this state. The tax is equal to three dollars per
15 patient day.

16 NEW SECTION. **Sec. 4.** Chapter 82.32 RCW applies to the tax
17 imposed in this chapter. The tax due dates, reporting periods, and
18 return requirements applicable to chapter 82.04 RCW apply equally to
19 the tax imposed in this chapter.

20 NEW SECTION. **Sec. 5.** Sections 2 through 4 of this act shall
21 constitute a new chapter in Title 82 RCW.

22 NEW SECTION. **Sec. 6.** (1) Sections 2 through 4 of this act
23 shall expire on the expiration date determined under section 1 of this
24 act.

1 (2) The expiration of sections 2 through 4 of this act shall not be
2 construed as affecting any existing right acquired or liability or
3 obligation incurred under those sections or under any rule or order
4 adopted under those sections, nor as affecting any proceeding
5 instituted under those sections.

6 (3) Taxes that have been paid under sections 2 through 4 of this
7 act, but are properly attributable to taxable events occurring after
8 the expiration of those sections, shall be credited or refunded as
9 provided in RCW 82.32.060.

10 **Sec. 7.** RCW 74.46.020 and 1991 sp.s. c 8 s 11 are each amended to
11 read as follows:

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

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

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

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

28 (4) "Arm's-length transaction" means a transaction resulting from
29 good-faith bargaining between a buyer and seller who are not related

1 organizations and have adverse positions in the market place. Sales or
2 exchanges of nursing home facilities among two or more parties in which
3 all parties subsequently continue to own one or more of the facilities
4 involved in the transactions shall not be considered as arm's-length
5 transactions for purposes of this chapter. Sale of a nursing home
6 facility which is subsequently leased back to the seller within five
7 years of the date of sale shall not be considered as an arm's-length
8 transaction for purposes of this chapter.

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

12 (6) "Bad debts" means amounts considered to be uncollectible from
13 accounts and notes receivable.

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

16 (8) "Beneficial owner" means:

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

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

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

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

29 (c) Any person who, subject to subparagraph (b) of this subsection,
30 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:

1 (A) The power to vote or to direct the vote of the pledged
2 ownership interest; or

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

7 (9) "Capitalization" means the recording of an expenditure as an
8 asset.

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

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

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

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

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

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

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

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

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

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

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

13 (~~(21))~~ (20) "Generally accepted auditing standards" means
14 auditing standards approved by the American institute of certified
15 public accountants (AICPA).

16 (~~(22))~~ (21) "Goodwill" means the excess of the price paid for a
17 business over the fair market value of all other identifiable,
18 tangible, and intangible assets acquired.

19 (~~(23))~~ (22) "Historical cost" means the actual cost incurred in
20 acquiring and preparing an asset for use, including feasibility
21 studies, architect's fees, and engineering studies.

22 (~~(24))~~ (23) "Imprest fund" means a fund which is regularly
23 replenished in exactly the amount expended from it.

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

27 (~~(26))~~ (25) "Lease agreement" means a contract between two
28 parties for the possession and use of real or personal property or
29 assets for a specified period of time in exchange for specified
30 periodic payments. Elimination (due to any cause other than death or

1 divorce) or addition of any party to the contract, expiration, or
2 modification of any lease term in effect on January 1, 1980, or
3 termination of the lease by either party by any means shall constitute
4 a termination of the lease agreement. An extension or renewal of a
5 lease agreement, whether or not pursuant to a renewal provision in the
6 lease agreement, shall be considered a new lease agreement. A strictly
7 formal change in the lease agreement which modifies the method,
8 frequency, or manner in which the lease payments are made, but does not
9 increase the total lease payment obligation of the lessee, shall not be
10 considered modification of a lease term.

11 ~~((27))~~ (26) "Medical care program" means medical assistance
12 provided under RCW 74.09.500 or authorized state medical care services.

13 ~~((28))~~ (27) "Medical care recipient" or "recipient" means an
14 individual determined eligible by the department for the services
15 provided in chapter 74.09 RCW.

16 ~~((29))~~ (28) "Net book value" means the historical cost of an
17 asset less accumulated depreciation.

18 ~~((30))~~ (29) "Net invested funds" means the net book value of
19 tangible fixed assets employed by a contractor to provide services
20 under the medical care program, including land, buildings, and
21 equipment as recognized and measured in conformity with generally
22 accepted accounting principles, plus an allowance for working capital
23 which shall be five percent of the allowable costs of each contractor
24 for the previous calendar year.

25 ~~((31))~~ (30) "Operating lease" means a lease under which rental or
26 lease expenses are included in current expenses in accordance with
27 generally accepted accounting principles.

28 ~~((32))~~ (31) "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 (~~(33)~~) (32) "Ownership interest" means all interests beneficially
2 owned by a person, calculated in the aggregate, regardless of the form
3 which such beneficial ownership takes.

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

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

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

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

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

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

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

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

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.

8 (~~(37)~~) (36) "Questioned costs" means those costs which have been
9 determined in accordance with generally accepted accounting principles
10 but which may constitute disallowed costs or departures from the
11 provisions of this chapter or rules and regulations adopted by the
12 department.

13 (~~(38)~~) (37) "Records" means those data supporting all financial
14 statements and cost reports including, but not limited to, all general
15 and subsidiary ledgers, books of original entry, and transaction
16 documentation, however such data are maintained.

17 (~~(39)~~) (38) "Related organization" means an entity which is under
18 common ownership and/or control with, or has control of, or is
19 controlled by, the contractor.

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

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

27 (~~(40)~~) (39) "Restricted fund" means those funds the principal
28 and/or income of which is limited by agreement with or direction of the
29 donor to a specific purpose.

1 ~~((41))~~ (40) "Secretary" means the secretary of the department of
2 social and health services.

3 ~~((42))~~ (41) "Title XIX" or "Medicaid" means the 1965 amendments
4 to the social security act, P.L. 89-07, as amended.

5 ~~((43))~~ (42) "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 **Sec. 8.** RCW 74.46.380 and 1991 sp.s. c 8 s 12 are each amended to
9 read as follows:

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

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

18 ~~((3) If there is a sale of a nursing facility on or after July 1,
19 1991, that results in a gain on sale, the actual reimbursement for
20 depreciation paid to the selling contractor through the medicaid
21 reimbursement program shall be recovered by the department to the
22 extent of any gain on sale. The purchaser is obligated to reimburse
23 the department, whether or not the purchaser is a medicaid contractor.
24 If the department is unable to collect from the purchaser, then the
25 seller is responsible for reimbursing the department. The department
26 may establish an appropriate repayment schedule to recover
27 depreciation. If the purchaser is a medicaid contractor and the
28 contractor does not comply with the repayment schedule established by
29 the department, the department may deduct the recovery from the~~

1 contractor's monthly medicaid payments. The department may adopt
2 rules, as appropriate, to insure that the principles of this section
3 are implemented with respect to leased assets, or with respect to sales
4 of intangibles or specific assets only.))

5 **Sec. 9.** RCW 74.46.660 and 1991 sp.s. c 8 s 13 are each amended to
6 read as follows:

7 In order to participate in the prospective cost-related
8 reimbursement system established by this chapter, the person or legal
9 organization responsible for operation of a facility shall:

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

13 (2) Hold the appropriate current license;

14 (3) Hold current Title XIX certification;

15 (4) Hold a current contract to provide services under this chapter;

16 (5) Comply with all provisions of the contract and all application
17 regulations, including but not limited to the provisions of this
18 chapter; and

19 (6) Obtain and maintain medicare certification, under Title XVIII
20 of the social security act, 42 U.S.C. Sec. 1395, as amended, for ((no
21 less than fifteen percent)) a portion of the facility's licensed beds.
22 The department may grant exemptions through June 1, 1993, to nursing
23 facilities that in the judgment of the department are making good faith
24 efforts to obtain the required medicare certification.

25 **Sec. 10.** RCW 74.46.481 and 1991 sp.s. c 8 s 16 are each amended to
26 read as follows:

27 (1) The nursing services cost center shall include all costs
28 related to the direct provision of nursing and related care, including

1 fringe benefits and payroll taxes for the nursing and related care
2 personnel. For rates effective for state fiscal year 1984, the
3 department shall adopt by administrative rule a definition of "related
4 care" which shall incorporate, but not exceed services reimbursable as
5 of June 30, 1983. For rates effective for state fiscal year 1985, the
6 definition of related care shall include ancillary care. For rates
7 effective after June 30, 1991, nursing services costs, as reimbursed
8 within this chapter and as tested for reasonableness within this
9 section, shall not include costs of any purchased nursing care
10 services, including registered nurse, licensed practical nurse, and
11 nurse assistant services, obtained through service contract arrangement
12 in excess of the amount of compensation paid for such hours of nursing
13 care service had they been paid at the average hourly wage, including
14 related taxes and benefits, for in-house nursing care staff of like
15 classification at the same nursing facility, as reported in the most
16 recent cost report period.

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

20 (3) (~~Utilizing~~) Using regression or other statistical techniques,
21 the department shall determine a reasonable limit on facility nursing
22 staff taking into account facility patient characteristics. For
23 purposes of this section, facility nursing staff refers to registered
24 nurses, licensed practical nurses and nursing assistants employed by
25 the facility or obtained through temporary labor contract arrangements.
26 Effective January 1, 1988, the hours associated with the training of
27 nursing assistants and the supervision of that training for nursing
28 assistants shall not be included in the calculation of facility nursing
29 staff. In selecting a measure of patient characteristics, the
30 department shall take into account:

1 (a) The correlation between alternative measures and facility
2 nursing staff; and

3 (b) The cost of collecting information for and computation of a
4 measure.

5 If regression is used, the limit shall be set at predicted nursing
6 staff plus 1.75 regression standard errors. If another statistical
7 method is ~~((utilized))~~ used, the limit shall be set at a level
8 corresponding to 1.75 standard errors above predicted staffing computed
9 according to a regression procedure.

10 (4) No facility shall receive reimbursement for nursing staff
11 levels in excess of the limit, except that, if a facility was
12 reimbursed for a nursing staff level in excess of the limit as of June
13 30, 1983, the facility may ~~((chese-[choose]))~~ choose to continue to
14 receive its June, 1983 nursing services rate plus any adjustments in
15 rates, such as adjustments for economic trends, made available to all
16 facilities. However, nursing staff levels established under subsection
17 (3) of this section shall not apply to the nursing services cost center
18 reimbursement rate for the pilot facility especially designed to meet
19 the needs of persons living with AIDS as defined by RCW 70.24.017 and
20 specifically authorized for this purpose under the 1989 amendment to
21 the Washington state health plan ~~(([1989-1st-ex.s.-c-9]))~~. The
22 reasonableness limit established pursuant to this subsection shall
23 remain in effect for the period July 1, 1983 through June 30, 1985. At
24 that time the department may revise the measure of patient
25 characteristics or method used to establish the limit.

26 (5) The department shall select an index of cost increase relevant
27 to the nursing and related services cost area. In the absence of a
28 more representative index, the department shall use the medical care
29 component index as maintained by the United States bureau of labor
30 statistics.

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

6 (a) If the percentage cost increase for a facility is below the
7 increase in the selected index for the same time period, the facility's
8 reimbursement rate in the nursing services cost center shall equal the
9 facility's cost from the most recent cost reporting period plus any
10 allowance for inflation provided by legislative appropriation.

11 (b) If the percentage cost increase for a facility exceeds the
12 increase in the selected index, the department shall limit the cost
13 used for setting the facility's rate in the nursing services cost area
14 to a level reflecting the increase in the selected index.

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

20 (a) If the percentage cost increase for a facility is below the
21 increase in the index selected pursuant to subsection (5) of this
22 section, the facility's reimbursement rate in the nursing cost center
23 shall equal the facility's cost from the most recent cost reporting
24 period adjusted downward to reflect the limit on nursing staff, plus
25 any allowance for inflation provided by legislative appropriation
26 subject to the provisions of subsection (4) of this section.

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
30 center to a level reflecting the nursing staff limit and the cost

1 increase limit, subject to the provisions of subsection (4) of this
2 section, plus any allowance for inflation provided by legislative
3 appropriation.

4 (8) Prospective rates for the nursing services cost center(~~(, for~~
5 ~~state fiscal year 1992 only,~~) shall not be subject to the cost growth
6 index lid in subsections (5), (6), and (7) of this section(~~(-)~~), except
7 that the lid shall apply for state fiscal year 1991 ((rate setting))
8 and for all state fiscal years ((subsequent to fiscal year 1992))
9 beginning after the expiration date determined under section 1 of this
10 act.

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

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

27 (11) The department, in consultation with interested parties, shall
28 adopt rules to establish the criteria the department will use in
29 reviewing any requests by a contractor for a prospective rate
30 adjustment to be used to increase the number of nursing staff. These

1 rules shall also specify the time period for submission and review of
2 staffing requests: PROVIDED, That a decision on a staffing request
3 shall not take longer than sixty days from the date the department
4 receives such a complete request. In establishing the criteria, the
5 department may consider, but is not limited to, the following:

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

7 (b) Staffing patterns for similar facilities;

8 (c) Physical plant of contractor; and

9 (d) Survey, inspection of care, and department consultation
10 results.

11 **Sec. 11.** RCW 74.46.500 and 1980 c 177 s 50 are each amended to
12 read as follows:

13 (1) The administration and operations cost center shall include all
14 items not included in the cost centers of nursing services, food, and
15 property.

16 (2) The administration and operations cost center reimbursement
17 rate for each facility shall be based on the computation in this
18 subsection and shall not exceed the eighty-fifth percentile of (a) the
19 rates of all reporting facilities derived from the computation below,
20 or (b) reporting facilities grouped in accordance with subsection (3)
21 of this section:

22 $AR = TAC/TPD$, where

23 AR = the administration and operations cost center reimbursement rate
24 for a facility;

25 TAC = the total costs of the administration and operations cost center
26 plus the retained savings from such cost center as provided in RCW
27 74.46.180 of a facility; and

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

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

4 (4) In calculating TAC under subsection (2) of this section, the
5 cost of taxes imposed under section 3 of this act shall be excluded.
6 In addition to the reimbursement rate calculated under subsection (2)
7 of this section, each facility shall be reimbursed through the
8 expiration date determined under section 1 of this act for taxes
9 imposed for medicaid patient days under section 3 of this act.

10 **Sec. 12.** RCW 74.46.530 and 1991 sp.s. c 8 s 17 are each amended to
11 read as follows:

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

15 (a) The financing allowance shall be determined by multiplying the
16 net invested funds of each facility by .11 and dividing by the
17 contractor's total patient days for periods through the expiration date
18 determined under section 1 of this act, and shall be determined by
19 multiplying the net invested funds of each facility by .10, and
20 dividing by the contractor's total patient days for periods after the
21 expiration date determined under section 1 of this act. If a
22 capitalized addition or retirement of an asset will result in a
23 different licensed bed capacity during the ensuing period, the prior
24 period total patient days used in computing the financing and variable
25 return allowances shall be adjusted to the anticipated patient day
26 level.

27 (b) In computing the portion of net invested funds representing the
28 net book value of tangible fixed assets, the same assets, depreciation
29 bases, lives, and methods referred to in RCW 74.46.330, 74.46.350,

1 74.46.360, 74.46.370, and 74.46.380, including owned and leased assets,
2 shall be utilized, except that the capitalized cost of land upon which
3 the facility is located and such other contiguous land which is
4 reasonable and necessary for use in the regular course of providing
5 patient care shall also be included. Subject to provisions and
6 limitations contained in this chapter, for land purchased by owners or
7 lessors before July 18, 1984, capitalized cost of land shall be the
8 buyer's capitalized cost. For all partial or whole rate periods after
9 July 17, 1984, if the land is purchased after July 17, 1984,
10 capitalized cost shall be that of the owner of record on July 17, 1984,
11 or buyer's capitalized cost, whichever is lower. In the case of leased
12 facilities where the net invested funds are unknown or the contractor
13 is unable to provide necessary information to determine net invested
14 funds, the secretary shall have the authority to determine an amount
15 for net invested funds based on an appraisal conducted according to RCW
16 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 and
21 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 percent,
25 by the total prospective rate for each facility, as determined in RCW
26 74.46.450 through 74.46.510. The percentage amounts will be based on
27 groupings of facilities according to the rankings as established in (i)
28 of this subsection (1)(c). Those groups of facilities with lower per
29 diem costs shall receive higher percentage amounts than those with
30 higher per diem costs.

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

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

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

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

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

3 (iii) The return on investment allowance determined according to
4 (~~(subsection (1))~~)(d) of this (~~(section)~~) subsection or the alternate
5 return on investment allowance, whichever is greater, shall be the
6 return on investment allowance for the facility and shall be added to
7 the prospective rates of the contractor as determined in RCW 74.46.450
8 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)~~) subsection shall
13 be applied except that in the case of renewals or extensions made
14 subsequent to April 1, 1985, reimbursement for the annualized lease
15 payment shall be no greater than the reimbursement for the annualized
16 lease payment for the last year prior to the renewal or extension of
17 the lease.

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

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

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

3 **Sec. 13.** RCW 74.46.495 and 1983 1st ex.s. c 67 s 26 are each
4 amended to read as follows:

5 (1)(a) Through the expiration date determined under section 1 of
6 this act, references in RCW 74.46.490 and 74.46.481 to adjustments for
7 inflation mean the federal health care financing administration's
8 eighteen-month nursing home market basket index.

9 (b) After the expiration date determined under section 1 of this
10 act, references in RCW 74.46.490 and 74.46.481 to adjustments for
11 inflation mean percentages determined by the legislature in the
12 biennial operating budget act.

13 For fiscal year 1993, the health care financing administration
14 market basket under (a) of this subsection may be reduced to the extent
15 that fully funding the inflation rate would cost more than the amount
16 from the general fund--state of the funds appropriated for this purpose
17 in section 15(3) of this act. In distributing the available moneys
18 under this subsection (1)(c), the nursing cost center will be fully
19 funded if possible, then the food cost center will be fully funded if
20 possible, and then the remainder of the moneys will be distributed to
21 the administration and operations cost center.

22 (2) Inflation adjustments shall be applied as follows:

23 (a) Where a prior period rate forms the basis for the next period
24 rate, the adjustment in subsection (1) of this section shall be applied
25 to that prior period rate.

26 (b) In the nursing services cost center rates beginning July 1,
27 1984, and the administration and operations cost center rate, the
28 adjustments in subsection (1) of this section shall be applied to prior
29 period annual costs in establishing July rates. Where a July rate is

1 based upon a cost report covering less than twelve months, the
2 department shall reduce the inflation adjustment factor in subsection
3 (1) of this section proportionately.

4 NEW SECTION. **Sec. 14.** A new section is added to chapter 74.46 RCW
5 to read as follows:

6 Upon the expiration date determined under section 1 of this act,
7 the department shall recalculate and set rates consistent with this
8 chapter.

9 NEW SECTION. **Sec. 15.** The legislative budget committee shall
10 conduct a study of asset transfer and estate recovery provisions as
11 they relate to establishing medicaid eligibility, especially for
12 residents of nursing facilities. The study's findings and
13 recommendations shall be presented by December 1, 1992. The study will
14 ascertain if current statutes and regulations are being fully enforced.
15 The study will review the practices of other states, and the
16 relationship of current asset transfer and estate recovery provisions
17 to the development of affordable long-term care insurance. The study
18 will also review the financial impact upon the long-term care budget of
19 alternative asset transfer and estate recovery provisions. In
20 conducting this study, the legislative budget committee shall consult
21 with the department of social and health services, senior citizens,
22 nursing home residents, nursing home providers, long-term care
23 insurers, and others as necessary.

24 NEW SECTION. **Sec. 16.** (1) The department of social and health
25 services, in cooperation with the nursing facility provider community,
26 shall undertake a review of the current methods for funding
27 construction, renovation, and replacement of nursing facilities. The

1 review shall examine housing cost funding systems in other states,
2 including at least the nine states closest to Washington in size of
3 elderly population. Study findings and recommendations shall be
4 presented to the legislature by December 1, 1992.

5 (2) The sum of dollars is appropriated from the general
6 fund--state to the department of social and health services for the
7 biennium ending June 30, 1993, for the purposes of this section.

8 NEW SECTION. **Sec. 17.** (1) The sum of eight million nine
9 hundred twelve thousand dollars from the general fund--state and the
10 sum of ten million eight hundred ninety-three thousand dollars from the
11 general fund--federal, or as much thereof as may be necessary, are
12 appropriated for the biennium ending June 30, 1993, to the long-term
13 care program of the department of social and health services for
14 prospective rate increases to fund on a current basis the medicaid
15 share of the tax under section 3 of this act.

16 (2) The sum of two million seven hundred thousand dollars from the
17 general fund--state and the sum of three million three hundred thousand
18 dollars from the general fund--federal, or as much thereof as may be
19 necessary, are appropriated for the biennium ending June 30, 1993, to
20 the long-term care program of the department of social and health
21 services for prospective rate increases for removing the growth lid
22 from the nursing services cost center, setting the financing allowance
23 at eleven percent, and eliminating the current depreciation recapture
24 requirement.

25 (3) The sum of six million dollars from the general fund--state and
26 seven million three hundred thirty-three dollars from the general
27 fund--federal are appropriated for the biennium ending June 30, 1993,
28 to the long-term care program of the department of social and health
29 services for setting the nursing home prospective inflation rate by use

1 of the federal health care financing administration's eighteen-month
2 nursing home market basket index.

3 (4) The appropriations in this section shall lapse on the
4 expiration date determined under section 1 of this act. Amounts that
5 have been paid under this subsection, but are properly attributable to
6 a period after that expiration date, shall be repaid or credited to the
7 state as provided in rules of the department of revenue.

8 NEW SECTION. **Sec. 18.** The sum of fifty thousand dollars, or as
9 much thereof as may be necessary, is appropriated from the general fund
10 to the department of community development for the biennium ending June
11 30, 1993, for the establishment of a long-term care ombudsman program
12 in Pierce county.

13 NEW SECTION. **Sec. 19.** This act shall take effect July 1, 1992.