

SENATE BILL 5292

State of Washington

52nd Legislature

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By Senators West and Wojahn; by request of Dept. of Social & Health Services.

Read first time January 28, 1991. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to compliance with federal requirements concerning
2 land, depreciable assets, and resident finances; amending RCW
3 74.46.360, 74.46.410, 74.46.530, and 74.46.700; and repealing RCW
4 74.46.710, 74.46.720, 74.46.730, 74.46.740, 74.46.750, and 74.46.760.

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

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

8 (1) For all partial or whole rate periods after December 31, 1984,
9 the cost basis of land and depreciation base of depreciable assets
10 shall be the historical cost of the contractor or lessor, when the
11 assets are leased by the contractor, in acquiring the asset in an
12 arm's-length transaction and preparing it for use, less goodwill, and
13 less accumulated depreciation, if applicable, which has been incurred
14 during periods that the assets have been used in or as a facility by
15 any contractor, such accumulated depreciation to be measured in

1 accordance with subsections (2), (3), and (4) of this section and RCW
2 74.46.350 and 74.46.370. If the department challenges the historical
3 cost of an asset, or if the contractor cannot or will not provide the
4 historical costs, the department will have the department of general
5 administration, through an appraisal procedure, determine the fair
6 market value of the assets at the time of purchase. The cost basis of
7 land and depreciation base of ((the)) depreciable assets will not
8 exceed such fair market value.

9 (2) The historical cost of depreciable and nondepreciable donated
10 assets, or of depreciable and nondepreciable assets received through
11 testate or intestate distribution, shall be the lesser of:

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

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

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

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

25 (b) The provisions of (a) of this subsection shall not apply to the
26 most recent arm's-length acquisition if it occurs at least ten years
27 after the ownership of the assets has been previously transferred in an
28 arm's-length transaction nor to the first arm's-length acquisition that
29 occurs after January 1, 1980, for facilities participating in the
30 medical care program prior to January 1, 1980. The new cost basis or

1 depreciation base for such acquisitions shall not exceed the fair
2 market value of the assets as determined by the department of general
3 administration through an appraisal procedure. A determination by the
4 department of general administration of fair market value shall be
5 final unless the procedure used to make such determination is shown to
6 be arbitrary and capricious. For all partial or whole rate periods
7 after July 17, 1984, this subsection is inoperative for any transfer of
8 ownership of any asset, depreciable or nondepreciable, occurring on or
9 after July 18, 1984, leaving (a) of this subsection to apply alone to
10 such transfers: PROVIDED, HOWEVER, That this subsection shall apply to
11 transfers of ownership of assets occurring prior to January 1, 1985, if
12 the costs of such assets have never been reimbursed under medicaid cost
13 reimbursement on an owner-operated basis or as a related-party lease:
14 PROVIDED FURTHER, That for any contractor that can document in writing
15 an enforceable agreement for the purchase of a nursing home dated prior
16 to July 18, 1984, and submitted to the department prior to January 1,
17 1988, the cost basis of allowable land and the depreciation base of the
18 nursing home, for rates established after July 18, 1984, shall not
19 exceed the fair market value of the assets at the date of purchase as
20 determined by the department of general administration through an
21 appraisal procedure. For medicaid cost reimbursement purposes, an
22 agreement to purchase a nursing home dated prior to July 18, 1984, is
23 enforceable, even though such agreement contains no legal description
24 of the real property involved, notwithstanding the statute of frauds or
25 any other provision of law.

26 (c) In the case of land or depreciable assets leased by the same
27 contractor since January 1, 1980, in an arm's-length lease, and
28 purchased by the lessee/contractor, the lessee/contractor shall have
29 the option:

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

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

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

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

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

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

18 (d) For all rate periods past or future where land or depreciable
19 assets are acquired from a related organization, the contractor's cost
20 basis and depreciation base shall not exceed the base the related
21 organization had or would have had under a contract with the
22 department.

23 (e) Where the land or depreciable asset is a donation or
24 distribution between related organizations, the cost basis or
25 depreciation base shall be the lesser of (i) fair market value, less
26 salvage value, or (ii) the cost basis or depreciation base the related
27 organization had or would have had for the asset under a contract with
28 the department.

1 **Sec. 2.** RCW 74.46.410 and 1989 c 372 s 2 are each amended to read
2 as follows:

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

6 (2) Unallowable costs include, but are not limited to, the
7 following:

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

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

15 (c) Costs associated with a capital expenditure subject to section
16 1122 approval (part 100, Title 42 C.F.R.) if the department found it
17 was not consistent with applicable standards, criteria, or plans. If
18 the department was not given timely notice of a proposed capital
19 expenditure, all associated costs will be unallowable up to the date
20 they are determined to be reimbursable under applicable federal
21 regulations;

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

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

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

- 1 (g) Costs in excess of limits or in violation of principles set
2 forth in this chapter;
- 3 (h) Costs resulting from transactions or the application of
4 accounting methods which circumvent the principles of the cost-related
5 reimbursement system set forth in this chapter;
- 6 (i) Costs applicable to services, facilities, and supplies
7 furnished by a related organization in excess of the lower of the cost
8 to the related organization or the price of comparable services,
9 facilities, or supplies purchased elsewhere;
- 10 (j) Bad debts of non-Title XIX recipients. Bad debts of Title XIX
11 recipients are allowable if the debt is related to covered services, it
12 arises from the recipient's required contribution toward the cost of
13 care, the provider can establish that reasonable collection efforts
14 were made, the debt was actually uncollectible when claimed as
15 worthless, and sound business judgment established that there was no
16 likelihood of recovery at any time in the future;
- 17 (k) Charity and courtesy allowances;
- 18 (l) Cash, assessments, or other contributions, excluding dues, to
19 charitable organizations, professional organizations, trade
20 associations, or political parties, and costs incurred to improve
21 community or public relations;
- 22 (m) Vending machine expenses;
- 23 (n) Expenses for barber or beautician services not included in
24 routine care;
- 25 (o) Funeral and burial expenses;
- 26 (p) Costs of gift shop operations and inventory;
- 27 (q) Personal items such as cosmetics, smoking materials, newspapers
28 and magazines, and clothing, except those used in patient activity
29 programs;

1 (r) Fund-raising expenses, except those directly related to the
2 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 the
8 department;

9 (w) Expenses of key-man insurance and other insurance or retirement
10 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 contractor
14 would expend for the ordinary and economic provision of such a
15 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 a
22 prudent contractor would expend for the ordinary and economic provision
23 of transportation needs related to patient care;

24 (ee) Legal and consultant fees in connection with a fair hearing
25 against the department where a decision is rendered in favor of the
26 department or where otherwise the determination of the department
27 stands;

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

1 (gg) Lease acquisition costs and other intangibles not related to
2 patient care;

3 (hh) All rental or lease costs other than those provided in RCW
4 74.46.300 on and after the effective date of RCW 74.46.510 and
5 74.46.530;

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

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

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

24 (ll) For all partial or whole rate periods after July 17, 1984,
25 costs of land and depreciable assets which cannot be reimbursed under
26 the Deficit Reduction Act of 1984 and implementing state statutory and
27 regulatory provisions.

28 **Sec. 3.** RCW 74.46.530 and 1985 c 361 s 17 are each amended to read
29 as follows:

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

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

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

30 (c) In determining the variable return allowance:

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

5 (ii) The department shall then compute the variable return
6 allowance by multiplying the appropriate percentage amounts, which
7 shall not be less than one percent and not greater than four percent,
8 by the total prospective rate for each facility, as determined in RCW
9 74.46.450 through 74.46.510. The percentage amounts will be based on
10 groupings of facilities according to the rankings as established in
11 subparagraph (1)(b)(i) of this section. Those groups of facilities
12 with lower per diem costs shall receive higher percentage amounts than
13 those with higher per diem costs.

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

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

27 (i) The financing allowance shall be recomputed substituting the
28 fair market value of the assets as of January 1, 1982, as determined by
29 the department of general administration through an appraisal
30 procedure, less accumulated depreciation on the lessor's assets since

1 January 1, 1982, for the net book value of the assets in determining
2 net invested funds for the facility. A determination by the department
3 of general administration of fair market value shall be final unless
4 the procedure used to make such determination is shown to be arbitrary
5 and capricious.

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

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

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

27 (2) In the event that the department of health and human services
28 disallows the application of the return on investment allowances to
29 nonprofit facilities, the department shall modify the measurements of
30 net invested funds used for computing individual facility return on

1 investment allowances as follows: Net invested funds for each
2 nonprofit facility shall be multiplied by one minus the ratio of equity
3 funds to the net invested funds of all nonprofit facilities.

4 (3) Each biennium, beginning in 1985, the secretary shall review
5 the adequacy of return on investment allowances in relation to
6 anticipated requirements for maintaining, reducing, or expanding
7 nursing care capacity. The secretary shall report the results of such
8 review to the legislature and make recommendations for adjustments in
9 the return on investment rates utilized in this section, if
10 appropriate.

11 **Sec. 4.** RCW 74.46.700 and 1980 c 177 s 70 are each amended to read
12 as follows:

13 ~~((1))~~ Each ~~((contractor))~~ nursing home shall establish and
14 maintain, as a service to the ~~((medical care recipient))~~ resident, a
15 bookkeeping system incorporated into the business records for all
16 ~~((recipient))~~ resident moneys entrusted to the contractor and received
17 by the facility for the ~~((recipient))~~ resident.

18 ~~((2) Such system will apply to a recipient who is:~~

19 ~~(a) Incapable of handling his or her own money and the department
20 or the recipient's guardian, relative, or physician makes written
21 request of the facility to accept this responsibility; or~~

22 ~~(b) Capable of handling his or her own money, but requests the
23 facility in writing to accept this responsibility.~~

24 ~~(3) The written requests provided in subsection (2) of this section
25 shall be maintained by the contractor in the recipient's file.~~

26 ~~(4) The recipient must be given at least a quarterly reporting of
27 all financial transactions in his or her trust account. The
28 representative payee, the guardian, and/or other designated agents of~~

1 ~~the recipient must be sent a copy of said reporting on the same basis~~
2 ~~as the recipient.))~~

3 The department shall promulgate regulations to ensure that resident
4 personal funds handled by the facility are maintained by each nursing
5 home in a manner that is, at a minimum, consistent with federal
6 requirements.

7 NEW SECTION. Sec. 5. The following acts or parts of acts are each
8 repealed:

- 9 (1) RCW 74.46.710 and 1983 1st ex.s. c 67 s 37 & 1980 c 177 s 71;
10 (2) RCW 74.46.720 and 1983 1st ex.s. c 67 s 38 & 1980 c 177 s 72;
11 (3) RCW 74.46.730 and 1980 c 177 s 73;
12 (4) RCW 74.46.740 and 1980 c 177 s 74;
13 (5) RCW 74.46.750 and 1980 c 177 s 75; and
14 (6) RCW 74.46.760 and 1985 c 7 s 149 & 1980 c 177 s 76.