
SENATE BILL 5827

State of Washington

52nd Legislature

1991 Regular Session

By Senators West, McDonald and Niemi; by request of Office of Financial Management and Dept. of Social & Health Services.

Read first time February 25, 1991. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to regulation of nursing homes; and amending RCW
2 18.51.050, 74.46.660, 74.46.020, 74.46.210, 74.46.380, 74.46.410,
3 74.46.481, and 74.46.530.

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

5 **Sec. 1.** RCW 18.51.050 and 1989 c 372 s 1 are each amended to read
6 as follows:

7 Upon receipt of an application for license, the department shall
8 issue a license if the applicant and the nursing home facilities meet
9 the requirements established under this chapter, except that the
10 department shall issue a temporary license to a court-appointed
11 receiver for a period not to exceed six months from the date of
12 appointment. Prior to the issuance or renewal of the license, the
13 licensee shall pay a license fee as established by the department. No
14 fee shall be required of government operated institutions or court-
15 appointed receivers. All licenses issued under the provisions of this

1 chapter shall expire on a date to be set by the department, but no
2 license issued pursuant to this chapter shall exceed thirty-six months
3 in duration. When a change of ownership occurs, the entity becoming
4 the licensed operating entity of the facility shall pay a fee
5 established by the department at the time of application for the
6 license. The previously determined date of license expiration shall
7 not change. (~~The department shall conduct, without charge to the~~
8 ~~nursing homes, one annual licensing and certification survey per~~
9 ~~calendar year and one postsurvey visit.~~

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

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

1 **Sec. 2.** RCW 74.46.660 and 1980 c 177 s 66 are each amended to read
2 as follows:

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

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

9 (2) Hold the appropriate current license;

10 (3) Hold current Title XIX certification;

11 (4) Hold a current contract to provide services under this chapter;
12 (~~and~~)

13 (5) Comply with all provisions of the contract and all application
14 regulations, including but not limited to the provisions of this
15 chapter; and

16 (6) Obtain and maintain medicare certification, under Title XVIII
17 of the social security act, 42 U.S.C. Sec. 1395, as amended, for no
18 less than fifteen percent of the facility's licensed beds.

19 **Sec. 3.** RCW 74.46.020 and 1989 c 372 s 17 are each amended to read
20 as follows:

21 Unless the context clearly requires otherwise, the definitions in
22 this section apply throughout this chapter.

23 (1) "Accrual method of accounting" means a method of accounting in
24 which revenues are reported in the period when they are earned,
25 regardless of when they are collected, and expenses are reported in the
26 period in which they are incurred, regardless of when they are paid.

27 (2) "Ancillary care" means those services required by the
28 individual, comprehensive plan of care provided by qualified
29 therapists.

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

8 (4) "Arm's-length transaction" means a transaction resulting from
9 good-faith bargaining between a buyer and seller who are not related
10 organizations and have adverse positions in the market place. Sales or
11 exchanges of nursing home facilities among two or more parties in which
12 all parties subsequently continue to own one or more of the facilities
13 involved in the transactions shall not be considered as arm's-length
14 transactions for purposes of this chapter. Sale of a nursing home
15 facility which is subsequently leased back to the seller within five
16 years of the date of sale shall not be considered as an arm's-length
17 transaction for purposes of this chapter.

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

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

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

25 (8) "Beneficial owner" means:

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

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

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

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

9 (c) Any person who, subject to subparagraph (b) of this subsection,
10 has the right to acquire beneficial ownership of such ownership
11 interest within sixty days, including but not limited to any right to
12 acquire:

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

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

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

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

19 except that, any person who acquires an ownership interest or power
20 specified in subparagraphs (i), (ii), or (iii) of this subparagraph (c)
21 with the purpose or effect of changing or influencing the control of
22 the contractor, or in connection with or as a participant in any
23 transaction having such purpose or effect, immediately upon such
24 acquisition shall be deemed to be the beneficial owner of the ownership
25 interest which may be acquired through the exercise or conversion of
26 such ownership interest or power;

27 (d) Any person who in the ordinary course of business is a pledgee
28 of ownership interest under a written pledge agreement shall not be
29 deemed to be the beneficial owner of such pledged ownership interest
30 until the pledgee has taken all formal steps necessary which are

1 required to declare a default and determines that the power to vote or
2 to direct the vote or to dispose or to direct the disposition of such
3 pledged ownership interest will be exercised; except that:

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

9 (ii) The pledgee agreement, prior to default, does not grant to the
10 pledgee:

11 (A) The power to vote or to direct the vote of the pledged
12 ownership interest; or

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

17 (9) "Capitalization" means the recording of an expenditure as an
18 asset.

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

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

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

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

1 (14) "Entity" means an individual, partnership, corporation, or any
2 other association of individuals capable of entering enforceable
3 contracts.

4 (15) "Equity" means the net book value of all tangible and
5 intangible assets less the recorded value of all liabilities, as
6 recognized and measured in conformity with generally accepted
7 accounting principles.

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

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

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

19 (19) "Gain on sale" means the difference between the remaining
20 undepreciated base and any proceeds received for, or to compensate for,
21 the asset.

22 (20) "Generally accepted accounting principles" means accounting
23 principles approved by the financial accounting standards board (FASB).

24 ~~((20))~~ (21) "Generally accepted auditing standards" means
25 auditing standards approved by the American institute of certified
26 public accountants (AICPA).

27 ~~((21))~~ (22) "Goodwill" means the excess of the price paid for a
28 business over the fair market value of all other identifiable,
29 tangible, and intangible assets acquired.

1 (~~(22)~~) (23) "Historical cost" means the actual cost incurred in
2 acquiring and preparing an asset for use, including feasibility
3 studies, architect's fees, and engineering studies.

4 (~~(23)~~) (24) "Imprest fund" means a fund which is regularly
5 replenished in exactly the amount expended from it.

6 (~~(24)~~) (25) "Joint facility costs" means any costs which
7 represent resources which benefit more than one facility, or one
8 facility and any other entity.

9 (~~(25)~~) (26) "Lease agreement" means a contract between two
10 parties for the possession and use of real or personal property or
11 assets for a specified period of time in exchange for specified
12 periodic payments. Elimination (due to any cause other than death or
13 divorce) or addition of any party to the contract, expiration, or
14 modification of any lease term in effect on January 1, 1980, or
15 termination of the lease by either party by any means shall constitute
16 a termination of the lease agreement. An extension or renewal of a
17 lease agreement, whether or not pursuant to a renewal provision in the
18 lease agreement, shall be considered a new lease agreement. A strictly
19 formal change in the lease agreement which modifies the method,
20 frequency, or manner in which the lease payments are made, but does not
21 increase the total lease payment obligation of the lessee, shall not be
22 considered modification of a lease term.

23 (~~(26)~~) (27) "Medical care program" means medical assistance
24 provided under RCW 74.09.500 or authorized state medical care services.

25 (~~(27)~~) (28) "Medical care recipient" or "recipient" means an
26 individual determined eligible by the department for the services
27 provided in chapter 74.09 RCW.

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

1 (~~(29)~~) (30) "Net invested funds" means the net book value of
2 tangible fixed assets employed by a contractor to provide services
3 under the medical care program, including land, buildings, and
4 equipment as recognized and measured in conformity with generally
5 accepted accounting principles, plus an allowance for working capital
6 which shall be five percent of the allowable costs of each contractor
7 for the previous calendar year.

8 (~~(30)~~) (31) "Operating lease" means a lease under which rental or
9 lease expenses are included in current expenses in accordance with
10 generally accepted accounting principles.

11 (~~(31)~~) (32) "Owner" means a sole proprietor, general or limited
12 partners, and beneficial interest holders of five percent or more of a
13 corporation's outstanding stock.

14 (~~(32)~~) (33) "Ownership interest" means all interests beneficially
15 owned by a person, calculated in the aggregate, regardless of the form
16 which such beneficial ownership takes.

17 (~~(33)~~) (34) "Patient day" or "client day" means a calendar day of
18 care which will include the day of admission and exclude the day of
19 discharge; except that, when admission and discharge occur on the same
20 day, one day of care shall be deemed to exist.

21 (~~(34)~~) (35) "Professionally designated real estate appraiser"
22 means an individual who is regularly engaged in the business of
23 providing real estate valuation services for a fee, and who is deemed
24 qualified by a nationally recognized real estate appraisal educational
25 organization on the basis of extensive practical appraisal experience,
26 including the writing of real estate valuation reports as well as the
27 passing of written examinations on valuation practice and theory, and
28 who by virtue of membership in such organization is required to
29 subscribe and adhere to certain standards of professional practice as
30 such organization prescribes.

1 (~~(35)~~) (36) "Qualified therapist" means:

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

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

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

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

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

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

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

17 (h) An occupational therapist who is a graduate of a program in
18 occupational therapy, or who has the equivalent of such education or
19 training.

20 (~~(36)~~) (37) "Questioned costs" means those costs which have been
21 determined in accordance with generally accepted accounting principles
22 but which may constitute disallowed costs or departures from the
23 provisions of this chapter or rules and regulations adopted by the
24 department.

25 (~~(37)~~) (38) "Records" means those data supporting all financial
26 statements and cost reports including, but not limited to, all general
27 and subsidiary ledgers, books of original entry, and transaction
28 documentation, however such data are maintained.

1 (~~(38)~~) (39) "Related organization" means an entity which is under
2 common ownership and/or control with, or has control of, or is
3 controlled by, the contractor.

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

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

11 (~~(39)~~) (40) "Restricted fund" means those funds the principal
12 and/or income of which is limited by agreement with or direction of the
13 donor to a specific purpose.

14 (~~(40)~~) (41) "Secretary" means the secretary of the department of
15 social and health services.

16 (~~(41)~~) (42) "Title XIX" or "Medicaid" means the 1965 amendments
17 to the social security act, P.L. 89-07, as amended.

18 (~~(42)~~) (43) "Physical plant capital improvement" means a
19 capitalized improvement that is limited to an improvement to the
20 building or the related physical plant.

21 **Sec. 4.** RCW 74.46.210 and 1980 c 177 s 21 are each amended to read
22 as follows:

23 (~~(All necessary and ordinary expenses a contractor incurs in~~
24 ~~providing care services will be allowable costs.)) All documented
25 costs that are ordinary, necessary, and related to the care of medical
26 care recipients and are not expressly unallowable will be allowable
27 costs. These expenses include:~~

28 (1) Meeting licensing and certification standards;

1 (2) Meeting standards of providing regular room, nursing,
2 ancillary, and dietary services, as established by department rule and
3 regulation pursuant to chapter 211, Laws of 1979 ex. sess.; and

4 (3) Fulfilling accounting and reporting requirements imposed by
5 this chapter.

6 **Sec. 5.** RCW 74.46.380 and 1980 c 177 s 38 are each amended to read
7 as follows:

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

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

16 (3) If there has been a sale of a building and any building
17 improvements used in providing care that results in a gain on sale, the
18 actual reimbursement for depreciation paid to the current contractor
19 through the medicaid reimbursement program shall be recovered by the
20 department. If the purchaser has a medicaid contract, the purchaser is
21 obligated to reimburse the department. If the purchaser has no
22 medicaid contract, the seller is responsible for reimbursing the
23 department.

24 **Sec. 6.** RCW 74.46.410 and 1989 c 372 s 2 are each amended to read
25 as follows:

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

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

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

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

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

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

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

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

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

27 (h) Costs resulting from transactions or the application of
28 accounting methods which circumvent the principles of the cost-related
29 reimbursement system set forth in this chapter;

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

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

12 (k) Charity and courtesy allowances;

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

17 (m) Vending machine expenses;

18 (n) Expenses for barber or beautician services not included in
19 routine care;

20 (o) Funeral and burial expenses;

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

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

25 (r) Fund-raising expenses, except those directly related to the
26 patient activity program;

27 (s) Penalties and fines;

28 (t) Expenses related to telephones, televisions, radios, and
29 similar appliances in patients' private accommodations;

30 (u) Federal, state, and other income taxes;

1 (v) Costs of special care services except where authorized by the
2 department;

3 (w) Expenses of key-man insurance and other insurance or retirement
4 plans not made available to all employees;

5 (x) Expenses of profit-sharing plans;

6 (y) Expenses related to the purchase and/or use of private or
7 commercial airplanes which are in excess of what a prudent contractor
8 would expend for the ordinary and economic provision of such a
9 transportation need related to patient care;

10 (z) Personal expenses and allowances of owners or relatives;

11 (aa) All expenses of maintaining professional licenses or
12 membership in professional organizations;

13 (bb) Costs related to agreements not to compete;

14 (cc) Amortization of goodwill;

15 (dd) Expenses related to vehicles which are in excess of what a
16 prudent contractor would expend for the ordinary and economic provision
17 of transportation needs related to patient care;

18 (ee) Legal and consultant fees in connection with a fair hearing
19 against the department where a decision is rendered in favor of the
20 department or where otherwise the determination of the department
21 stands;

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

24 (gg) Lease acquisition costs and other intangibles not related to
25 patient care;

26 (hh) All rental or lease costs other than those provided in RCW
27 74.46.300 on and after the effective date of RCW 74.46.510 and
28 74.46.530;

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

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

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

19 (ll) Compensation paid for any purchased direct nursing service in
20 excess of the fiftieth percentile of purchased direct nursing service
21 costs, based on per patient day calculations, reported in the most
22 recent cost report period by all contractors, whether or not they used
23 purchased direct nursing services.

24 **Sec. 7.** RCW 74.46.481 and 1990 c 207 s 1 are each amended to read
25 as follows:

26 (1) The nursing services cost center shall include all costs
27 related to the direct provision of nursing and related care, including
28 fringe benefits and payroll taxes for the nursing and related care
29 personnel. For rates effective for state fiscal year 1984, the

1 department shall adopt by administrative rule a definition of "related
2 care" which shall incorporate, but not exceed services reimbursable as
3 of June 30, 1983. For rates effective for state fiscal year 1985, the
4 definition of related care shall include ancillary care. For rates
5 effective after June 30, 1991, nursing services costs, as reimbursed
6 within this chapter and as tested for reasonableness within this
7 section, shall not include costs of any purchased direct nursing
8 service in excess of the fiftieth percentile of purchased direct
9 nursing costs, based on per patient day calculations, reported in the
10 most recent cost report period by all contractors, whether or not they
11 used purchased direct nursing services.

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

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

26 (a) The correlation between alternative measures and facility
27 nursing staff; and

28 (b) The cost of collecting information for and computation of a
29 measure.

1 If regression is used, the limit shall be set at predicted nursing
2 staff plus 1.75 regression standard errors. If another statistical
3 method is utilized, the limit shall be set at a level corresponding to
4 1.75 standard errors above predicted staffing computed according to a
5 regression procedure.

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

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

27 (6) If a facility's nursing staff level is below the limit
28 specified in subsection (3) of this section, the department shall
29 determine the percentage increase for all items included in the nursing

1 services cost center between the facility's most recent cost reporting
2 period and the next prior cost reporting period.

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

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

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

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

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

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

13 (9) The department shall establish a method for identifying
14 patients with exceptional care requirements and a method for
15 establishing or negotiating on a consistent basis rates for such
16 patients.

17 (10) The department, in consultation with interested parties, shall
18 adopt rules to establish the criteria the department will use in
19 reviewing any requests by a contractor for a prospective rate
20 adjustment to be used to increase the number of nursing staff. These
21 rules shall also specify the time period for submission and review of
22 staffing requests: PROVIDED, That a decision on a staffing request
23 shall not take longer than sixty days from the date the department
24 receives such a complete request. In establishing the criteria, the
25 department may consider, but is not limited to, the following:

- 26 (a) Increases in acuity levels of contractors' residents;
 - 27 (b) Staffing patterns for similar facilities;
 - 28 (c) Physical plant of contractor; and
 - 29 (d) Survey, inspection of care, and department consultation
- 30 results.

1 **Sec. 8.** RCW 74.46.530 and 1985 c 361 s 17 are each amended to read
2 as follows:

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

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

13 (b) In computing the portion of net invested funds representing the
14 net book value of tangible fixed assets, the same assets, depreciation
15 bases, lives, and methods referred to in RCW 74.46.330, 74.46.350,
16 74.46.360, ~~((and))~~ 74.46.370, and 74.46.380, including owned and leased
17 assets, shall be utilized, except that the capitalized cost of land
18 upon which the facility is located and such other contiguous land which
19 is reasonable and necessary for use in the regular course of providing
20 patient care shall also be included. In the case of leased facilities
21 where the net invested funds are unknown or the contractor is unable to
22 provide necessary information to determine net invested funds, the
23 secretary shall have the authority to determine an amount for net
24 invested funds based on an appraisal conducted according to RCW
25 74.46.360(1).

26 (c) In determining the variable return allowance:

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

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

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

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

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

1 the procedure used to make such determination is shown to be arbitrary
2 and capricious.

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

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

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

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

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