

2 SSB 5724 - S AMD (001055)  
3 By Senator Rinehart

4 ADOPTED 5/5/93

5 Strike everything after the enacting clause and insert the  
6 following:

7 "Sec. 1. RCW 74.46.020 and 1991 sp.s. c 8 s 11 are each amended to  
8 read as follows:

9 Unless the context clearly requires otherwise, the definitions in  
10 this section apply throughout this chapter.

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

15 (2) "Ancillary care" means those services required by the  
16 individual, comprehensive plan of care provided by qualified  
17 therapists.

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

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

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

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

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

8 (8) "Beneficial owner" means:

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

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

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

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

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

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

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

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

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

31 except that, any person who acquires an ownership interest or power  
32 specified in subparagraphs (i), (ii), or (iii) of this subparagraph (c)  
33 with the purpose or effect of changing or influencing the control of  
34 the contractor, or in connection with or as a participant in any  
35 transaction having such purpose or effect, immediately upon such  
36 acquisition shall be deemed to be the beneficial owner of the ownership  
37 interest which may be acquired through the exercise or conversion of  
38 such ownership interest or power;

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

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

13 (ii) The pledgee agreement, prior to default, does not grant to the  
14 pledgee:

15 (A) The power to vote or to direct the vote of the pledged  
16 ownership interest; or

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

21 (9) "Capitalization" means the recording of an expenditure as an  
22 asset.

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

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

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

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

34 (14) "Entity" means an individual, partnership, corporation, or any  
35 other association of individuals capable of entering enforceable  
36 contracts.

37 (15) "Equity" means the net book value of all tangible and  
38 intangible assets less the recorded value of all liabilities, as

1 recognized and measured in conformity with generally accepted  
2 accounting principles.

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

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

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

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

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

19 ~~((21))~~ (20) "Generally accepted auditing standards" means  
20 auditing standards approved by the American institute of certified  
21 public accountants (AICPA).

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

25 ~~((23))~~ (22) "Historical cost" means the actual cost incurred in  
26 acquiring and preparing an asset for use, including feasibility  
27 studies, architect's fees, and engineering studies.

28 ~~((24))~~ (23) "Imprest fund" means a fund which is regularly  
29 replenished in exactly the amount expended from it.

30 ~~((25))~~ (24) "Joint facility costs" means any costs which  
31 represent resources which benefit more than one facility, or one  
32 facility and any other entity.

33 ~~((26))~~ (25) "Lease agreement" means a contract between two  
34 parties for the possession and use of real or personal property or  
35 assets for a specified period of time in exchange for specified  
36 periodic payments. Elimination (due to any cause other than death or  
37 divorce) or addition of any party to the contract, expiration, or  
38 modification of any lease term in effect on January 1, 1980, or  
39 termination of the lease by either party by any means shall constitute

1 a termination of the lease agreement. An extension or renewal of a  
2 lease agreement, whether or not pursuant to a renewal provision in the  
3 lease agreement, shall be considered a new lease agreement. A strictly  
4 formal change in the lease agreement which modifies the method,  
5 frequency, or manner in which the lease payments are made, but does not  
6 increase the total lease payment obligation of the lessee, shall not be  
7 considered modification of a lease term.

8 ~~((+27))~~ (26) "Medical care program" means medical assistance  
9 provided under RCW 74.09.500 or authorized state medical care services.

10 ~~((+28))~~ (27) "Medical care recipient" or "recipient" means an  
11 individual determined eligible by the department for the services  
12 provided in chapter 74.09 RCW.

13 ~~((+29))~~ (28) "Net book value" means the historical cost of an  
14 asset less accumulated depreciation.

15 ~~((+30))~~ (29) "Net invested funds" means the net book value of  
16 tangible fixed assets employed by a contractor to provide services  
17 under the medical care program, including land, buildings, and  
18 equipment as recognized and measured in conformity with generally  
19 accepted accounting principles, plus an allowance for working capital  
20 which shall be five percent of the ~~((allowable costs))~~ product of the  
21 per patient day rate multiplied by the prior calendar year reported  
22 total patient days of each contractor ~~((for the previous calendar~~  
23 ~~year))~~.

24 ~~((+31))~~ (30) "Operating lease" means a lease under which rental or  
25 lease expenses are included in current expenses in accordance with  
26 generally accepted accounting principles.

27 ~~((+32))~~ (31) "Owner" means a sole proprietor, general or limited  
28 partners, and beneficial interest holders of five percent or more of a  
29 corporation's outstanding stock.

30 ~~((+33))~~ (32) "Ownership interest" means all interests beneficially  
31 owned by a person, calculated in the aggregate, regardless of the form  
32 which such beneficial ownership takes.

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

37 ~~((+35))~~ (34) "Professionally designated real estate appraiser"  
38 means an individual who is regularly engaged in the business of  
39 providing real estate valuation services for a fee, and who is deemed

1 qualified by a nationally recognized real estate appraisal educational  
2 organization on the basis of extensive practical appraisal experience,  
3 including the writing of real estate valuation reports as well as the  
4 passing of written examinations on valuation practice and theory, and  
5 who by virtue of membership in such organization is required to  
6 subscribe and adhere to certain standards of professional practice as  
7 such organization prescribes.

8 ~~((+36+))~~ (35) "Qualified therapist" means:

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

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

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

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

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

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

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

24 (h) An occupational therapist who is a graduate of a program in  
25 occupational therapy, or who has the equivalent of such education or  
26 training; and

27 (i) A respiratory care practitioner certified under chapter 18.89  
28 RCW.

29 ~~((+37+))~~ (36) "Questioned costs" means those costs which have been  
30 determined in accordance with generally accepted accounting principles  
31 but which may constitute disallowed costs or departures from the  
32 provisions of this chapter or rules and regulations adopted by the  
33 department.

34 ~~((+38+))~~ (37) "Records" means those data supporting all financial  
35 statements and cost reports including, but not limited to, all general  
36 and subsidiary ledgers, books of original entry, and transaction  
37 documentation, however such data are maintained.

1 ((+39+)) (38) "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 ((+40+)) (39) "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 ((+41+)) (40) "Secretary" means the secretary of the department of  
15 social and health services.

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

18 ((+43+)) (42) "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. 2.** RCW 74.46.180 and 1987 c 476 s 1 and 1987 c 283 s 9 are  
22 each reenacted and amended to read as follows:

23 (1) The state shall make payment of any underpayments within thirty  
24 days after the date the preliminary or final settlement report is  
25 submitted to the contractor.

26 (2) A contractor found to have received either overpayments or  
27 erroneous payments under a preliminary or final settlement shall refund  
28 such payments to the state within thirty days after the date the  
29 preliminary or final settlement report is submitted to the contractor,  
30 subject to the provisions of subsections (3), (4), and (7) of this  
31 section.

32 (3) Within the cost centers of nursing services and food, all  
33 savings resulting from the respective allowable costs being lower than  
34 the respective reimbursement rate paid to the contractor during the  
35 report period shall be refunded to the department. However, in  
36 computing a preliminary or final settlement, savings in a cost center  
37 may be shifted to cover a deficit in another cost center up to the  
38 amount of any savings~~((:—PROVIDED, That)).~~ Not more than twenty

1 percent of the rate in a cost center may be shifted into that cost  
2 center and no shifting may be made into the property cost center(~~(÷~~  
3 ~~PROVIDED FURTHER, That~~)). There shall be no shifting out of nursing  
4 services, and savings in food shall be shifted only to cover deficits  
5 in the nursing services cost center. There shall be no shifting from  
6 the operational to the administrative cost center.

7 (4) Within the administrative and property cost centers (~~(of~~  
8 ~~administration and operations and property)~~), the contractor shall  
9 retain at least fifty percent, but not more than seventy-five percent,  
10 of any savings resulting from the respective audited allowable costs  
11 being lower than the respective reimbursement rates paid to the  
12 contractor during the report period multiplied by the number of  
13 authorized medical care client days in which said rates were in effect,  
14 except that no savings may be retained if reported costs in the  
15 administrative and property cost centers (~~(and the administration and~~  
16 ~~operations cost center)~~) exceed audited allowable costs in these cost  
17 areas by a total of ten cents or more per patient day. The secretary,  
18 by rule (~~(and regulation)~~), shall establish the basis for the specific  
19 percentages of savings to the contractors. Such rules (~~(and~~  
20 ~~regulations)~~) may provide for differences in the percentages allowed  
21 for each cost center to individual facilities based on performance  
22 measures related to administrative efficiency.

23 (5) All (~~(allowances)~~) return on investment rate payments provided  
24 by RCW 74.46.530 shall be retained by the contractor to the extent net  
25 invested funds are substantiated by department field audit. Any  
26 industrial insurance dividend or premium discount under RCW 51.16.035  
27 shall be retained by the contractor to the extent that such dividend or  
28 premium discount is attributable to the contractor's private patients.

29 (6) In the event the contractor fails to make repayment in the time  
30 provided in subsection (2) of this section, the department shall  
31 either:

32 (a) Deduct the amount of refund due, plus any interest accrued  
33 under RCW 43.20B.695, from payment amounts due the contractor; or

34 (b) In the instance the contract has been terminated, (i) deduct  
35 the amount of refund due, plus interest assessed at the rate and in the  
36 manner provided in RCW 43.20B.695, from any payments due; or (ii)  
37 recover the amount due, plus any interest assessed under RCW  
38 43.20B.695, from security posted with the department or by any other  
39 lawful means.



1 (7) Where the facility is pursuing timely-filed judicial or  
2 administrative remedies in good faith regarding settlement issues, the  
3 contractor need not refund nor shall the department withhold from the  
4 facility current payment amounts the department claims to be due from  
5 the facility but which are specifically disputed by the contractor. If  
6 the judicial or administrative remedy sought by the facility is not  
7 granted after all appeals are exhausted or mutually terminated, the  
8 facility shall make payment of such amounts due plus interest accrued  
9 from the date of filing of the appeal, as payable on judgments, within  
10 sixty days of the date such decision is made.

11 **Sec. 3.** RCW 74.46.230 and 1980 c 177 s 23 are each amended to read  
12 as follows:

13 (1) The necessary and ordinary one-time expenses directly incident  
14 to the preparation of a newly constructed or purchased building by a  
15 contractor for operation as a licensed facility shall be allowable  
16 costs. These expenses shall be limited to start-up and organizational  
17 costs incurred prior to the admission of the first patient.

18 (2) Start-up costs shall include, but not be limited to,  
19 administrative and nursing salaries, utility costs, taxes, insurance,  
20 repairs and maintenance, and training; except, that they shall exclude  
21 expenditures for capital assets. These costs will be allowable in the  
22 (~~administration and operations~~) administrative cost center if they  
23 are amortized over a period of not less than sixty months beginning  
24 with the month in which the first patient is admitted for care.

25 (3) Organizational costs are those necessary, ordinary, and  
26 directly incident to the creation of a corporation or other form of  
27 business of the contractor including, but not limited to, legal fees  
28 incurred in establishing the corporation or other organization and fees  
29 paid to states for incorporation; except, that they do not include  
30 costs relating to the issuance and sale of shares of capital stock or  
31 other securities. Such organizational costs will be allowable in the  
32 (~~administration and operations~~) administrative cost center if they  
33 are amortized over a period of not less than sixty months beginning  
34 with the month in which the first patient is admitted for care.

35 **Sec. 4.** RCW 74.46.280 and 1980 c 177 s 28 are each amended to read  
36 as follows:

37 (1) Management fees will be allowed only if:

1 (a) A written management agreement both creates a principal/agent  
2 relationship between the contractor and the manager, and sets forth the  
3 items, services, and activities to be provided by the manager; and

4 (b) Documentation demonstrates that the services contracted for  
5 were actually delivered.

6 (2) To be allowable, fees must be for necessary, nonduplicative  
7 services. ~~((Allowable fees for general management services, including  
8 the portion of a management fee which is not allocated to specific  
9 services such as accounting, are limited to~~

10 ~~(a) the maximum allowable compensation under RCW 74.46.260 of the  
11 licensed administrator and, if the facility has at least eighty beds,  
12 of an assistant administrator, less~~

13 ~~(b) actual compensation received by the licensed administrator and  
14 by the assistant administrator and administrator in training, if any.  
15 In computing maximum allowable compensation under RCW 74.46.260 for a  
16 facility with at least eighty beds, include the maximum compensation of  
17 an assistant administrator even if an assistant administrator is not  
18 employed.))~~

19 (3) A management fee paid to or for the benefit of a related  
20 organization will be allowable to the extent it does not exceed the  
21 lower of((÷

22 ~~(a) The limits set out in subsection (2) of this section; or~~

23 ~~(b) The lower of)) the actual cost to the related organization of  
24 providing necessary services related to patient care under the  
25 agreement((÷)) or the cost of comparable services purchased elsewhere.  
26 Where costs to the related organization represent joint facility costs,  
27 the measurement of such costs shall comply with RCW 74.46.270.~~

28 (4) A copy of the agreement must be received by the department at  
29 least sixty days before it is to become effective. A copy of any  
30 amendment to a management agreement must also be received by the  
31 department at least thirty days in advance of the date it is to become  
32 effective.

33 ~~((5) Central office costs for general management services,  
34 including the portion of a management expense which is not allocated to  
35 specific services, such as accounting, shall be subject to the  
36 management fee limits determined in subsections (2) and (3) of this  
37 section.))~~

1       **Sec. 5.** RCW 74.46.380 and 1991 sp.s. c 8 s 12 are each amended to  
2 read as follows:

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

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

11       ~~((3) If there is a sale of a nursing facility on or after July 1,  
12 1991, that results in a gain on sale, the actual reimbursement for  
13 depreciation paid to the selling contractor through the medicaid  
14 reimbursement program shall be recovered by the department to the  
15 extent of any gain on sale. The purchaser is obligated to reimburse  
16 the department, whether or not the purchaser is a medicaid contractor.  
17 If the department is unable to collect from the purchaser, then the  
18 seller is responsible for reimbursing the department. The department  
19 may establish an appropriate repayment schedule to recover  
20 depreciation. If the purchaser is a medicaid contractor and the  
21 contractor does not comply with the repayment schedule established by  
22 the department, the department may deduct the recovery from the  
23 contractor's monthly medicaid payments. The department may adopt  
24 rules, as appropriate, to insure that the principles of this section  
25 are implemented with respect to leased assets, or with respect to sales  
26 of intangibles or specific assets only.))~~

27       **Sec. 6.** RCW 74.46.410 and 1991 sp.s. c 8 s 15 are each amended to  
28 read as follows:

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

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

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

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

4 (c) Costs associated with a capital expenditure subject to section  
5 1122 approval (part 100, Title 42 C.F.R.) if the department found it  
6 was not consistent with applicable standards, criteria, or plans. If  
7 the department was not given timely notice of a proposed capital  
8 expenditure, all associated costs will be unallowable up to the date  
9 they are determined to be reimbursable under applicable federal  
10 regulations;

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

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

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

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

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

24 (i) Costs applicable to services, facilities, and supplies  
25 furnished by a related organization in excess of the lower of the cost  
26 to the related organization or the price of comparable services,  
27 facilities, or supplies purchased elsewhere;

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

35 (k) Charity and courtesy allowances;

36 (l) Cash, assessments, or other contributions, excluding dues, to  
37 charitable organizations, professional organizations, trade  
38 associations, or political parties, and costs incurred to improve  
39 community or public relations;

1 (m) Vending machine expenses;

2 (n) Expenses for barber or beautician services not included in  
3 routine care;

4 (o) Funeral and burial expenses;

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

6 (q) Personal items such as cosmetics, smoking materials, newspapers  
7 and magazines, and clothing, except those used in patient activity  
8 programs;

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

11 (s) Penalties and fines;

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

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

15 (v) Costs of special care services except where authorized by the  
16 department;

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

19 (x) Expenses of profit-sharing plans;

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

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

25 (aa) All expenses of maintaining professional licenses or  
26 membership in professional organizations;

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

28 (cc) Amortization of goodwill;

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

32 (ee) Legal and consultant fees in connection with a fair hearing  
33 against the department where a decision is rendered in favor of the  
34 department or where otherwise the determination of the department  
35 stands;

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

38 (gg) Lease acquisition costs and other intangibles not related to  
39 patient care;

1 (hh) All rental or lease costs other than those provided in RCW  
2 74.46.300 on and after the effective date of RCW 74.46.510 and  
3 74.46.530;

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

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

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

23 ~~(ll))~~ Compensation paid for any purchased nursing care services,  
24 including registered nurse, licensed practical nurse, and nurse  
25 assistant services, obtained through service contract arrangement in  
26 excess of the amount of compensation paid for such hours of nursing  
27 care service had they been paid at the average hourly wage, including  
28 related taxes and benefits, for in-house nursing care staff of like  
29 classification at the same nursing facility, as reported in the most  
30 recent cost report period;

31 ~~((mm))~~ (kk) For all partial or whole rate periods after July 17,  
32 1984, costs of land and depreciable assets that cannot be reimbursed  
33 under the Deficit Reduction Act of 1984 and implementing state  
34 statutory and regulatory provisions.

35 **Sec. 7.** RCW 74.46.420 and 1985 c 361 s 18 are each amended to read  
36 as follows:

37 The following principles are inherent in RCW 74.46.430 through  
38 74.46.590:

1       (1) Reimbursement rates will be set prospectively on a per patient  
2 day basis on a two-year cycle corresponding to each state biennium; and  
3       (2) The rates ((so established will)), in the nursing services,  
4 food, administrative, and operational cost centers, shall be adjusted  
5 downward or upward when set effective July 1 of the first fiscal year  
6 of the two-year rate-setting cycle and adjusted again downward or  
7 upward effective July 1 of the second fiscal year of the rate-setting  
8 cycle for economic ((conditions and)) trends ((in accordance with  
9 appropriations made by the legislature as consistent with federal  
10 requirements for the period to be covered by such rates)) and  
11 conditions.  
12       (3) The July 1 rates for the first year of each biennium shall be  
13 adjusted by the change in the implicit price deflator for personal  
14 consumption expenditures index published by the bureau of labor  
15 statistics of the United States department of labor. The period used  
16 to measure the increase or decrease to be applied to these first year  
17 biennial rates shall be the calendar year preceding the July 1  
18 commencement of the state biennium.  
19       (4) The July 1 rates for the second year of each biennium shall be  
20 adjusted by the change in the nursing home input price index without  
21 capital costs published by the health care financing administration of  
22 the department of health and human services, HCFA index, however, any  
23 increase shall be multiplied by one and one-half. The period used to  
24 measure the HCFA index increase to be multiplied by one and one-half  
25 and applied or decrease to be applied to these second-year biennial  
26 rates shall also be the calendar year preceding the July 1 commencement  
27 of the state biennium: PROVIDED, However, That in the event the change  
28 in the HCFA index measured over the following calendar year, the one  
29 terminating six months after the start of the state biennium, is  
30 twenty-five percent greater or less than the change in the HCFA index  
31 measured over the calendar year preceding commencement of the state  
32 biennium, the department shall use the HCFA index increase multiplied  
33 by one and one-half or decrease in such following calendar year to  
34 inflate or decrease nursing facilities' nursing services, food,  
35 administrative, and operational rates for July 1 of the second biennial  
36 year.  
37       (5) If either the implicit price deflator index or the health care  
38 financing administration index ceases to be published in the future,  
39 the department shall select by rule and use in their place one or more

1 measures of change from an alternate source or sources for the same or  
2 comparable time periods.

3 **Sec. 8.** RCW 74.46.430 and 1987 2nd ex.s. c 1 s 2 are each amended  
4 to read as follows:

5 (1) The department, as provided by this chapter, will determine  
6 prospective cost-related reimbursement rates for services provided to  
7 medical care recipients. Each rate so determined shall represent the  
8 contractor's maximum compensation within each cost center for each  
9 patient day for such medical care recipient.

10 (2) As required, the department may modify such maximum per patient  
11 day rates pursuant to the administrative review provisions of RCW  
12 74.46.780.

13 ~~(3) ((Until the effective date of RCW 74.46.510 and 74.46.530, the~~  
14 ~~maximum prospective reimbursement rates for the administration and~~  
15 ~~operations and the property cost centers shall be established based~~  
16 ~~upon a minimum facility occupancy level of eighty five percent.~~

17 ~~(4) On and after the effective date of RCW 74.46.510 and~~  
18 ~~74.46.530,)) The maximum prospective reimbursement rates for the~~  
19 ~~((administration and operations)) administrative, operational, and~~  
20 ~~((the)) property cost centers, and the return on investment~~  
21 ~~((allowance)) rate shall be established based upon a minimum facility~~  
22 ~~occupancy level of eighty-five percent.~~

23 ~~((+5)) (4) All contractors shall be required to adjust and~~  
24 ~~maintain wages for all employees to a minimum hourly wage ((established~~  
25 ~~by the legislature in the biennial appropriations act, if the~~  
26 ~~legislature appropriates moneys to fund prospectively the portion of~~  
27 ~~the minimum wage attributable to services to medicaid patients.~~  
28 ~~Prospective rate revisions to fund any minimum wage increases shall be~~  
29 ~~made only on the dates authorized in the appropriation act. The~~  
30 ~~department shall by regulation limit reimbursement to the amount~~  
31 ~~appropriated for legislatively authorized enhancement for~~  
32 ~~nonadministrative wages and benefits above the moneys necessary to fund~~  
33 ~~minimum wages specified in this section. The department in considering~~  
34 ~~reimbursement for legislatively authorized wage enhancements will take~~  
35 ~~into consideration facility wage history over the past three cost~~  
36 ~~report periods)) of four dollars and seventy-six cents per hour~~  
37 ~~beginning January 1, 1988, and five dollars and fifteen cents per hour~~  
38 ~~beginning January 1, 1989.~~



1       **Sec. 9.** RCW 74.46.450 and 1983 1st ex.s. c 67 s 20 are each  
2 amended to read as follows:

3       (1) Prospective reimbursement rates for a new contractor will be  
4 established within sixty days following receipt by the department of  
5 the properly completed projected budget required by RCW 74.46.670.  
6 Such reimbursement rates will become effective as of the effective date  
7 of the contract and shall remain in effect until (~~rates can be~~  
8 ~~established under RCW 74.46.460 based on a contractor's cost report~~  
9 ~~including at least six months of cost data~~) adjusted or reset as  
10 provided in this chapter.

11       (2) Such reimbursement rates will be based on the contractor's  
12 projected cost of operations and on costs and payment rates of the  
13 prior contractor, if any, or of other contractors in comparable  
14 circumstances.

15       (3) If a properly completed budget is not received at least sixty  
16 days prior to the effective date of the contract, the department will  
17 establish preliminary rates based on the other factors specified in  
18 subsection (2) of this section. These preliminary rates will remain in  
19 effect until (~~a determination is made pursuant to RCW 74.46.460~~)  
20 adjusted or reset as provided in this chapter.

21       (4) The department is authorized to develop policies and procedures  
22 in rule to address the computation of rates for the first and second  
23 fiscal years of each biennium, including steps necessary to prorate  
24 rate adjustments for economic trends and conditions as authorized in  
25 RCW 74.46.420, for contractors having less than twelve months of cost  
26 report data for the prior calendar year.

27       **Sec. 10.** RCW 74.46.460 and 1987 c 476 s 3 are each amended to read  
28 as follows:

29       (1) Each contractor's reimbursement rates will be determined or  
30 adjusted prospectively at least once each calendar year, as provided in  
31 this chapter, to be effective July 1st. Provided, that a contractor's  
32 rate for the first fiscal year of each biennium must be established  
33 upon its own prior calendar period report of at least six months of  
34 cost data.

35       (2) Rates may be adjusted as determined by the department to take  
36 into account variations in the distribution of patient classifications  
37 or changes in patient characteristics from the prior reporting year,  
38 program changes required by the department, or changes in staffing

1 levels at a facility required by the department. ((Rates shall be  
2 adjusted by the amount of legislatively authorized enhancements in  
3 accordance with RCW 74.46.430(5) and 74.46.470(2).)) Rates may also be  
4 adjusted to cover costs associated with placing a nursing home in  
5 receivership which costs are not covered by the rate of the former  
6 contractor, including: Compensation of the receiver, reasonable  
7 expenses of receivership and transition of control, and costs incurred  
8 by the receiver in carrying out court instructions or rectifying  
9 deficiencies found. Rates shall be adjusted for any capitalized  
10 additions or replacements made as a condition for licensure or  
11 certification. Rates shall be adjusted for capitalized improvements  
12 done under RCW 74.46.465.

13 ((3) Where the contractor participated in the provisions of  
14 prospective cost related reimbursement in effect prior to July 1, 1983,  
15 such contractor's prospective rate effective July 1, 1983, will be  
16 determined utilizing the contractor's desk reviewed allowable costs for  
17 calendar year 1982.

18 (4) All prospective reimbursement rates for 1984 and thereafter  
19 shall be determined utilizing the prior year's desk reviewed cost  
20 reports.))

21 **Sec. 11.** RCW 74.46.470 and 1987 c 476 s 4 are each amended to read  
22 as follows:

23 (1) A contractor's reimbursement rates for medical care recipients  
24 will be determined utilizing net invested funds and desk-reviewed cost  
25 report data within the following cost centers:

26 (a) Nursing services;

27 (b) Food;

28 (c) ((Administration and operations)) Administrative; ((and))

29 (d) Operational; and

30 (e) Property.

31 (2) There shall be for the time period January 1988 through June  
32 1990 only an enhancement cost center established to reimburse  
33 contractors for specific legislatively authorized enhancements for  
34 nonadministrative wages and benefits to ensure that such enhancements  
35 are used exclusively for the legislatively authorized purposes. For  
36 purposes of settlement, funds appropriated to this cost center shall  
37 only be used for expenditures for which the legislative authorization

1 is granted. Such funds may be used only in the following  
2 circumstances:

3 (a) The contractor has increased expenditures for which legislative  
4 authorization is granted to at least the highest level paid in any of  
5 the last three cost years, plus, beginning July 1, 1987, any percentage  
6 inflation adjustment as was granted each year under RCW 74.46.495; and

7 (b) All funds shifted from the enhancement cost center are shown to  
8 have been expended for legislatively authorized enhancements.

9 (3) If the contractor does not spend the amount appropriated to  
10 this cost center in the legislatively authorized manner, then the  
11 amounts not appropriately spent shall be recouped at preliminary or  
12 final settlement pursuant to RCW 74.46.160.

13 (4) For purposes of this section, "nonadministrative wages and  
14 benefits" means wages and payroll taxes paid with respect to, and the  
15 employer share of the cost of benefits provided to, employees in job  
16 classes specified in an appropriation, which may not include  
17 administrators, assistant administrators, or administrators in  
18 training.

19 (5) Amounts expended in the enhancement cost center in excess of  
20 the minimum wage established under RCW 74.46.430 are subject to all  
21 provisions contained in this chapter.

22 **Sec. 12.** RCW 74.46.481 and 1991 sp.s. c 8 s 16 are each amended to  
23 read as follows:

24 (1) The nursing services cost center shall include for reporting  
25 and audit purposes all costs related to the direct provision of nursing  
26 and related care, including fringe benefits and payroll taxes for the  
27 nursing and related care personnel, and the cost of nursing supplies.  
28 ~~((For rates effective for state fiscal year 1984,))~~ The department  
29 shall adopt by administrative rule a definition of "related care"  
30 ~~((which shall incorporate, but not exceed services reimbursable as of~~  
31 ~~June 30, 1983. For rates effective for state fiscal year 1985, the~~  
32 ~~definition of related care shall include ancillary care)).~~ For rates  
33 effective after June 30, 1991, nursing services costs, as reimbursed  
34 within this chapter ~~((and as tested for reasonableness within this~~  
35 ~~section)),~~ shall not include costs of any purchased nursing care  
36 services, including registered nurse, licensed practical nurse, and  
37 nurse assistant services, obtained through service contract arrangement  
38 in excess of the amount of compensation paid for such hours of nursing

1 care service had they been paid at the average hourly wage, including  
2 related taxes and benefits, for in-house nursing care staff of like  
3 classification at the same nursing facility, as reported in the most  
4 recent cost report period.

5 (2) The department shall adopt (~~by~~) through administrative rules  
6 a method for establishing a nursing services cost center rate  
7 consistent with the principles stated in this section.

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

19 (a) The correlation between alternative measures and facility  
20 nursing staff; and

21 (b) The cost of collecting information for and computation of a  
22 measure.

23 If regression is used, the limit shall be set at predicted nursing  
24 staff plus 1.75 regression standard errors. If another statistical  
25 method is utilized, the limit shall be set at a level corresponding to  
26 1.75 standard errors above predicted staffing computed according to a  
27 regression procedure. A regression calculated shall be effective for  
28 the entire biennium.

29 (4) No facility shall receive reimbursement for nursing staff  
30 levels in excess of the limit(~~(, except that, if a facility was~~  
31 ~~reimbursed for a nursing staff level in excess of the limit as of June~~  
32 ~~30, 1983, the facility may chose [choose] to continue to receive its~~  
33 ~~June, 1983 nursing services rate plus any adjustments in rates, such as~~  
34 ~~adjustments for economic trends, made available to all facilities)).~~  
35 However, nursing staff levels established under subsection (3) of this  
36 section shall not apply to the nursing services cost center  
37 reimbursement rate only for the pilot facility especially designed to  
38 meet the needs of persons living with AIDS as defined by RCW 70.24.017  
39 and specifically authorized for this purpose under the 1989 amendment

1 to the Washington state health plan. ((The reasonableness limit  
2 established pursuant to this subsection shall remain in effect for the  
3 period July 1, 1983 through June 30, 1985. At that time the department  
4 may revise the measure of patient characteristics or method used to  
5 establish the limit.))

6 (5) ((The department shall select an index of cost increase  
7 relevant to the nursing and related services cost area. In the absence  
8 of a more representative index, the department shall use the medical  
9 care component index as maintained by the United States bureau of labor  
10 statistics.)) Every two years when rates are set at the beginning of  
11 each new biennium, the department shall divide into two peer groups  
12 nursing facilities located in the state of Washington providing  
13 services to medicaid residents: (a) Those facilities located within a  
14 metropolitan statistical area as defined and determined by the United  
15 States office of management and budget or other applicable federal  
16 office and (b) those not located in such an area. The facilities in  
17 each peer group shall then be arrayed from lowest to highest by  
18 magnitude of per patient day adjusted nursing services cost from the  
19 prior report year, regardless of whether any such adjustments are  
20 contested by the nursing facility, and the median or fiftieth  
21 percentile cost for each peer group shall be determined. Nursing  
22 services rates for facilities within each peer group for the first year  
23 of the biennium shall be set at the lower of the facility's adjusted  
24 per patient day nursing services cost from the prior report period or  
25 the median cost for the facility's peer group plus twenty-five percent.  
26 This rate shall be reduced or inflated as authorized by RCW 74.46.420.  
27 However, the per patient day peer group median cost plus twenty-five  
28 percent limit shall not apply to the nursing services cost center  
29 reimbursement rate only for the pilot facility especially designed to  
30 meet the needs of persons living with AIDS as defined by RCW 70.24.017  
31 and specifically authorized for this purpose under the 1989 amendment  
32 to the Washington state health plan.

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

38 (a) If the percentage cost increase for a facility is below the  
39 increase in the selected index for the same time period, the facility's

1 reimbursement rate in the nursing services cost center shall equal the  
2 facility's cost from the most recent cost reporting period plus any  
3 allowance for inflation provided by legislative appropriation.

4 (b) If the percentage cost increase for a facility exceeds the  
5 increase in the selected index, the department shall limit the cost  
6 used for setting the facility's rate in the nursing services cost area  
7 to a level reflecting the increase in the selected index.

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

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

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

27 (8) Prospective rates for the nursing services cost center, for  
28 state fiscal year 1992 only, shall not be subject to the cost growth  
29 index lid in subsections (5), (6), and (7) of this section. The lid  
30 shall apply for state fiscal year 1991 rate setting and all state  
31 fiscal years subsequent to fiscal year 1992.

32 (9)) If a nursing facility is impacted by the limit authorized in  
33 subsection (5) of this section, it shall not receive a prospective rate  
34 in nursing services for July 1, 1993, less than the same facility's  
35 prospective rate in nursing services as of June 30, 1993, adjusted by  
36 any increase in the implicit price deflator for personal consumption  
37 expenditures, IPD index, as measured over the period authorized by RCW  
38 74.46.420(3).

1       (7) A nursing facility's rate in nursing services for the second  
2 year of each biennium shall be that facility's rate as of July 1 of the  
3 first year of that biennium reduced or inflated as authorized by RCW  
4 74.46.420. The alternating procedures prescribed in this section for  
5 a facility's two July 1 nursing services rates occurring within each  
6 biennium shall be followed in the same order for each succeeding  
7 biennium.

8       (8) Median costs for peer groups shall be calculated initially as  
9 provided in this chapter on the basis of the most recent adjusted cost  
10 information available to the department prior to the calculation of the  
11 new rate for July 1 of the first fiscal year of each biennium,  
12 regardless of whether the adjustments are contested or subject to  
13 pending administrative or judicial review. Median costs for peer  
14 groups shall be recalculated as provided in this chapter on the basis  
15 of the most recent adjusted cost information available to the  
16 department on October 31 of the first fiscal year of each biennium, and  
17 shall apply retroactively to the prior July 1 rate, regardless of  
18 whether the adjustments are contested or subject to pending  
19 administrative or judicial review. Median costs shall not be adjusted  
20 to reflect subsequent administrative or judicial rulings, whether final  
21 or not.

22       (9) The department is authorized to determine on a systematic basis  
23 facilities with unmet patient care service needs. The department may  
24 increase the nursing services cost center prospective rate for a  
25 facility beyond the level determined in accordance with subsection (6)  
26 of this section if the facility's actual and reported nursing staffing  
27 is one standard error or more below predicted staffing as determined  
28 according to the method selected pursuant to subsection (3) of this  
29 section and the facility has unmet patient care service needs:  
30 PROVIDED, That prospective rate increases authorized by this subsection  
31 shall be funded only from legislative appropriations made for this  
32 purpose during the periods authorized by such appropriations or other  
33 laws and the increases shall be conditioned on specified improvements  
34 in patient care at such facilities.

35       (10) The department shall establish a method for identifying  
36 patients with exceptional care requirements and a method for  
37 establishing or negotiating on a consistent basis rates for such  
38 patients.

1 (11) The department, in consultation with interested parties, shall  
2 adopt rules to establish the criteria the department will use in  
3 reviewing any requests by a contractor for a prospective rate  
4 adjustment to be used to increase the number of nursing staff. These  
5 rules shall also specify the time period for submission and review of  
6 staffing requests: PROVIDED, That a decision on a staffing request  
7 shall not take longer than sixty days from the date the department  
8 receives such a complete request. In establishing the criteria, the  
9 department may consider, but is not limited to, the following:

10 (a) Increases in ((acuity)) debility levels of contractors'  
11 residents determined in accordance with the department's assessment and  
12 reporting procedures and requirements utilizing the minimum data set;

13 (b) Staffing patterns for similar facilities in the same peer  
14 group;

15 (c) Physical plant of contractor; and

16 (d) Survey, inspection of care, and department consultation  
17 results.

18 **Sec. 13.** RCW 74.46.490 and 1983 1st ex.s. c 67 s 25 are each  
19 amended to read as follows:

20 (1) The food cost center shall include for reporting purposes all  
21 costs for bulk and raw food and beverages purchased for the dietary  
22 needs of medical care recipients.

23 (~~(2) ((Reimbursement for the food cost center shall be at the~~  
24 ~~January 1, 1983, reimbursement rate, adjusted annually for inflation.))~~)  
25 Every two years when rates are set at the beginning of each new  
26 biennium, the department shall divide into two peer groups nursing  
27 facilities located in the state of Washington providing services to  
28 medicaid residents: (a) Those facilities located within a metropolitan  
29 statistical area as defined and determined by the United States office  
30 of management and budget or other applicable federal office and (b)  
31 those not located in such an area. The facilities in each peer group  
32 shall then be arrayed from lowest to highest by magnitude of per  
33 patient day adjusted food cost from the prior report year, regardless  
34 of whether any such adjustments are contested by the nursing facility,  
35 and the median or fiftieth percentile cost for each peer group shall be  
36 determined. Food rates for facilities within each peer group for the  
37 first year of the biennium shall be set at the lower of the facility's  
38 adjusted per patient day food cost from the prior report period or the



1 median cost for the facility's peer group plus twenty-five percent.  
2 This rate shall be reduced or inflated as authorized by RCW 74.46.420.

3 (3) A nursing facility's food rate for the second year of each  
4 biennium shall be that facility's rate as of July 1 of the first year  
5 of that biennium reduced or inflated as authorized by RCW 74.46.420.  
6 The alternating procedures prescribed in this section for a facility's  
7 two July 1 food rates occurring within each biennium shall be followed  
8 in the same order for each succeeding biennium.

9 (4) Median costs for peer groups shall be calculated initially as  
10 provided in this chapter on the basis of the most recent adjusted cost  
11 information available to the department prior to the calculation of the  
12 new rate for July 1 of the first fiscal year of each biennium,  
13 regardless of whether the adjustments are contested or subject to  
14 pending administrative or judicial review. Median costs for peer  
15 groups shall be recalculated as provided in this chapter on the basis  
16 of the most recent adjusted cost information available to the  
17 department on October 31 of the first fiscal year of each biennium, and  
18 shall apply retroactively to the prior July 1 rate, regardless of  
19 whether the adjustments are contested or subject to pending  
20 administrative or judicial review. Median costs shall not be adjusted  
21 to reflect subsequent administrative or judicial rulings, whether final  
22 or not.

23 **Sec. 14.** RCW 74.46.500 and 1992 c 182 s 1 are each amended to read  
24 as follows:

25 (1) The ~~((administration and operations))~~ administrative cost  
26 center shall include ((all items not included in the cost centers of  
27 nursing services, food, and property.

28 ~~(2) Subject to subsection (4) of this section, the administration~~  
29 ~~and operations cost center reimbursement rate for each facility shall~~  
30 ~~be based on the computation in this subsection and shall not exceed the~~  
31 ~~eighty-fifth percentile of (a) the rates of all reporting facilities~~  
32 ~~derived from the computation below, or (b) reporting facilities grouped~~  
33 ~~in accordance with subsection (3) of this section:~~

1 AR = TAC/TPD, where

2 AR = the administration and operations cost center reimbursement  
3 rate for a facility;

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

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

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

11 (4) In applying the eighty-fifth percentile reimbursement limit  
12 authorized by subsection (2) of this section to the pilot facility  
13 specially designed to meet the needs of persons living with AIDS as  
14 defined by RCW 70.24.017, and specifically authorized for this purpose  
15 under the 1989 amendment to the Washington state health plan, the  
16 department shall exempt the cost of nursing supplies reported by the  
17 pilot facility in excess of the average of nursing supplies cost for  
18 medicaid nursing facilities state-wide) for cost reporting purposes  
19 all administrative, oversight, and management costs whether facility  
20 on-site or allocated in accordance with a department-approved joint-  
21 cost allocation methodology. Such costs shall be identical to the cost  
22 report line item costs categorized under "general and administrative"  
23 in the "administration and operations" combined cost center existing  
24 prior to January 1, 1993, except for nursing supplies and purchased  
25 medical records.

26 (2) Every two years when rates are set at the beginning of each new  
27 biennium, the department shall divide into two peer groups nursing  
28 facilities located in the state of Washington providing services to  
29 medicaid residents: (a) Those facilities located within a metropolitan  
30 statistical area as defined and determined by the United States office  
31 of management and budget or other applicable federal office and (b)  
32 those not located in such an area. The facilities in each peer group  
33 shall then be arrayed from lowest to highest by magnitude of per  
34 patient day adjusted administrative cost from the prior report year,  
35 regardless of whether any such adjustments are contested by the nursing  
36 facility, and the median or fiftieth percentile cost for each peer  
37 group shall be determined. Administrative rates for facilities within  
38 each peer group for the first year of the biennium shall be set at the  
39 lower of the facility's adjusted per patient day administrative cost

1 from the prior report period or the median cost for the facility's peer  
2 group plus ten percent. This rate shall be reduced or inflated as  
3 authorized by RCW 74.46.420.

4 (3) A nursing facility's administrative rate for the second year of  
5 each biennium shall be that facility's rate as of July 1 of the first  
6 year of that biennium reduced or inflated as authorized by RCW  
7 74.46.420. The alternating procedures prescribed in this section for  
8 a facility's two July 1 administrative rates occurring within each  
9 biennium shall be followed in the same order for each succeeding  
10 biennium.

11 (4) Median costs for peer groups shall be calculated initially as  
12 provided in this chapter on the basis of the most recent adjusted cost  
13 information available to the department prior to the calculation of the  
14 new rate for July 1 of the first fiscal year of each biennium,  
15 regardless of whether the adjustments are contested or subject to  
16 pending administrative or judicial review. Median costs for peer  
17 groups shall be recalculated as provided in this chapter on the basis  
18 of the most recent adjusted cost information available to the  
19 department on October 31 of the first fiscal year of each biennium, and  
20 shall apply retroactively to the prior July 1 rate, regardless of  
21 whether the adjustments are contested or subject to pending  
22 administrative or judicial review. Median costs shall not be adjusted  
23 to reflect subsequent administrative or judicial rulings, whether final  
24 or not.

25 NEW SECTION. Sec. 15. A new section is added to chapter 74.46 RCW  
26 to read as follows:

27 (1) The operational cost center shall include for cost reporting  
28 purposes all allowable costs of the daily operation of the facility not  
29 included in nursing services and related care, food, administrative, or  
30 property costs, whether such costs are facility on-site or allocated in  
31 accordance with a department-approved joint-cost allocation  
32 methodology.

33 (2) Every two years when rates are set at the beginning of each new  
34 biennium, the department shall divide into two peer groups nursing  
35 facilities located in the state of Washington providing services to  
36 medicaid residents: (a) Those facilities located within a metropolitan  
37 statistical area as defined and determined by the United States office  
38 of management and budget or other applicable federal office and (b)

1 those not located in such an area. The facilities in each peer group  
2 shall then be arrayed from lowest to highest by magnitude of per  
3 patient day adjusted operational cost from the prior report year,  
4 regardless of whether any such adjustments are contested by the nursing  
5 facility, and the median or fiftieth percentile cost for each peer  
6 group shall be determined. Operational rates for facilities within  
7 each peer group for the first year of the biennium shall be set at the  
8 lower of the facility's adjusted per patient day operational cost from  
9 the prior report period or the median cost for the facility's peer  
10 group plus twenty-five percent. This rate shall be reduced or inflated  
11 as authorized by RCW 74.46.420.

12 (3) A nursing facility's operational rate for the second year of  
13 each biennium shall be that facility's rate as of July 1 of the first  
14 year of that biennium reduced or inflated as authorized by RCW  
15 74.46.420. The alternating procedures prescribed in this section for  
16 a facility's two July 1 operational rates occurring within each  
17 biennium shall be followed in the same order for each succeeding  
18 biennium.

19 (4) Median costs for peer groups shall be calculated initially as  
20 provided in this chapter on the basis of the most recent adjusted cost  
21 information available to the department prior to the calculation of the  
22 new rate for July 1 of the first fiscal year of each biennium,  
23 regardless of whether the adjustments are contested or subject to  
24 pending administrative or judicial review. Median costs for peer  
25 groups shall be recalculated as provided in this chapter on the basis  
26 of the most recent adjusted cost information available to the  
27 department on October 31 of the first fiscal year of each biennium, and  
28 shall apply retroactively to the prior July 1 rate, regardless of  
29 whether the adjustments are contested or subject to pending  
30 administrative or judicial review. Median costs shall not be adjusted  
31 to reflect subsequent administrative or judicial rulings, whether final  
32 or not.

33 **Sec. 16.** RCW 74.46.510 and 1980 c 177 s 51 are each amended to  
34 read as follows:

35 (1) The property cost center rate for each facility shall be  
36 determined by dividing the sum of the reported allowable prior period  
37 actual depreciation (~~costs~~), subject to RCW 74.46.310 through  
38 74.46.380, adjusted for any capitalized additions or replacements

1 approved by the department, and the retained savings from such cost  
2 center, as provided in RCW 74.46.180, by the total patient days for the  
3 facility in the prior period. If a capitalized addition or retirement  
4 of an asset will result in a different licensed bed capacity during the  
5 ensuing period, the prior period total patient days used in computing  
6 the property cost center rate shall be adjusted to anticipated patient  
7 day level.

8 (2) A nursing facility's property rate shall be rebased annually,  
9 effective July 1, in accordance with this section regardless of whether  
10 the rate is for the first or second year of the biennium.

11 (3) When a certificate of need for a new facility is requested, the  
12 department, in reaching its decision, shall take into consideration  
13 per-bed land and building construction costs for the facility which  
14 shall not exceed a maximum to be established by the secretary.

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

17 (1) The department shall establish for ~~((individual facilities))~~  
18 each medicaid nursing facility a return on investment ((allowances))  
19 rate composed of two parts: A financing allowance and a variable  
20 return allowance. A facility's return on investment rate shall be  
21 rebased annually, effective July 1, in accordance with this section,  
22 regardless of whether the rate is for the first or second year of the  
23 biennium.

24 (a) The financing allowance shall be determined by multiplying the  
25 net invested funds of each facility by .10, and dividing by the  
26 contractor's total patient days from the most recent cost report  
27 period. If a capitalized addition or retirement of an asset will  
28 result in a different licensed bed capacity during the ensuing period,  
29 the prior period total patient days used in computing the financing and  
30 variable return allowances shall be adjusted to the anticipated patient  
31 day level.

32 (b) In computing the portion of net invested funds representing the  
33 net book value of tangible fixed assets, the same assets, depreciation  
34 bases, lives, and methods referred to in RCW 74.46.330, 74.46.350,  
35 74.46.360, 74.46.370, and 74.46.380, including owned and leased assets,  
36 shall be utilized, except that the capitalized cost of land upon which  
37 the facility is located and such other contiguous land which is  
38 reasonable and necessary for use in the regular course of providing

1 patient care shall also be included. Subject to provisions and  
2 limitations contained in this chapter, for land purchased by owners or  
3 lessors before July 18, 1984, capitalized cost of land shall be the  
4 buyer's capitalized cost. For all partial or whole rate periods after  
5 July 17, 1984, if the land is purchased after July 17, 1984,  
6 capitalized cost shall be that of the owner of record on July 17, 1984,  
7 or buyer's capitalized cost, whichever is lower. In the case of leased  
8 facilities where the net invested funds are unknown or the contractor  
9 is unable to provide necessary information to determine net invested  
10 funds, the secretary shall have the authority to determine an amount  
11 for net invested funds based on an appraisal conducted according to RCW  
12 74.46.360(1).

13 (c) In determining the variable return allowance:

14 (i) Every two years at the start of each new biennium, the  
15 department, without utilizing peer groups, will first rank all  
16 facilities in numerical order from highest to lowest according to their  
17 ((average per diem)) per patient day adjusted allowable costs for ((the  
18 sum of the administration and operations and property cost centers))  
19 nursing services, food, administrative, and operational costs combined  
20 for the previous cost report period.

21 (ii) The department shall then compute the variable return  
22 allowance by multiplying the appropriate percentage amounts, which  
23 shall not be less than one percent and not greater than four percent,  
24 by the ((total prospective rate for each facility, as determined in RCW  
25 74.46.450 through 74.46.510)) sum of the facility's nursing services,  
26 food, administrative, and operational rate components. The percentage  
27 amounts will be based on groupings of facilities according to the  
28 rankings ((as established)) prescribed in (i) of this subsection  
29 (1)(c). The percentages calculated and assigned will remain the same  
30 for the next variable return allowance paid in the second year of the  
31 biennium. Those groups of facilities with lower per diem costs shall  
32 receive higher percentage amounts than those with higher per diem  
33 costs.

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

38 (e) In the case of a facility which was leased by the contractor as  
39 of January 1, 1980, in an arm's-length agreement, which continues to be

1 leased under the same lease agreement, and for which the annualized  
2 lease payment, plus any interest and depreciation expenses associated  
3 with contractor-owned assets, for the period covered by the prospective  
4 rates, divided by the contractor's total patient days, minus the  
5 property cost center determined according to RCW 74.46.510, is more  
6 than the return on investment ((allowance)) rate determined according  
7 to subsection (1)(d) of this section, the following shall apply:

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

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

25 (iii) The return on investment ((allowance)) rate determined  
26 according to subsection (1)(d) of this section or the alternate return  
27 on investment ((allowance)) rate, whichever is greater, shall be the  
28 return on investment ((allowance)) rate for the facility and shall be  
29 added to the prospective rates of the contractor as determined in RCW  
30 74.46.450 through 74.46.510.

31 (f) In the case of a facility which was leased by the contractor as  
32 of January 1, 1980, in an arm's-length agreement, if the lease is  
33 renewed or extended pursuant to a provision of the lease, the treatment  
34 provided in subsection (1)(e) of this section shall be applied except  
35 that in the case of renewals or extensions made subsequent to April 1,  
36 1985, reimbursement for the annualized lease payment shall be no  
37 greater than the reimbursement for the annualized lease payment for the  
38 last year prior to the renewal or extension of the lease.

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

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

15       NEW SECTION.   **Sec. 18.** By November 15, 1994, the legislative  
16 budget committee shall complete a study of the nursing home  
17 reimbursement system. The study shall include an assessment of the  
18 financial stability of the nursing home industry, to the extent  
19 sufficient information is available from the industry and other sources  
20 to make such an assessment; an evaluation of the adequacy of the  
21 nursing home reimbursement system for promoting cost-effective, quality  
22 care; and, if appropriate, recommendations for improving the  
23 reimbursement system's capacity to promote sufficient availability of  
24 efficient and quality care. In conducting the study, the legislative  
25 budget committee shall consult with the nursing home industry, consumer  
26 groups, health care professionals, and the department of social and  
27 health services.

28       NEW SECTION.   **Sec. 19.** The following acts or parts of acts are  
29 each repealed:

- 30       (1) RCW 74.46.260 and 1980 c 177 s 26; and  
31       (2) RCW 74.46.495 and 1983 1st ex.s. c 67 s 26.

32       NEW SECTION.   **Sec. 20.** This act is necessary for the immediate  
33 preservation of the public peace, health, or safety, or support of the  
34 state government and its existing public institutions, and shall take  
35 effect July 1, 1993."



1 **SSB 5724** - S AMD  
2 By Senator Rinehart

ADOPTED 5/5/93

3  
4 On page 1, line 1 of the title, after "reimbursement;" strike the  
5 remainder of the title and insert "amending RCW 74.46.020, 74.46.230,  
6 74.46.280, 74.46.380, 74.46.410, 74.46.420, 74.46.430, 74.46.450,  
7 74.46.460, 74.46.470, 74.46.481, 74.46.490, 74.46.500, 74.46.510, and  
8 74.46.530; reenacting and amending RCW 74.46.180; adding a new section  
9 to chapter 74.46 RCW; creating a new section; repealing RCW 74.46.260  
10 and 74.46.495; providing an effective date; and declaring an  
11 emergency."

--- END ---