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HOUSE BILL 2109

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By Representatives G. Fisher, Wang, Ballard, Foreman, Morris, Linville, Dyer, Silver, Scott, Rayburn, Zellinsky, Kessler, Jones, Talcott, Cooke, Anderson, Campbell, Orr, Basich, King, Quall, Karahalios, L. Johnson, Lemmon, Thibaudeau, R. Meyers, Wolfe, Forner and Cothern

Read first time 03/24/93. Referred to Committee on Revenue.

1 AN ACT Relating to nursing homes; amending RCW 82.04.050,  
2 74.46.481, 74.46.020, 74.46.380, 74.46.530, and 74.46.495; adding a new  
3 section to chapter 74.46 RCW; adding a new chapter to Title 82 RCW;  
4 providing an effective date; and declaring an emergency.

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

6 **Sec. 1.** RCW 82.04.050 and 1988 c 253 s 1 are each amended to read  
7 as follows:

8 (1) "Sale at retail" or "retail sale" means every sale of tangible  
9 personal property (including articles produced, fabricated, or  
10 imprinted) to all persons irrespective of the nature of their business  
11 and including, among others, without limiting the scope hereof, persons  
12 who install, repair, clean, alter, improve, construct, or decorate real  
13 or personal property of or for consumers other than a sale to a person  
14 who (a) purchases for the purpose of resale as tangible personal  
15 property in the regular course of business without intervening use by  
16 such person, or (b) installs, repairs, cleans, alters, imprints,  
17 improves, constructs, or decorates real or personal property of or for  
18 consumers, if such tangible personal property becomes an ingredient or  
19 component of such real or personal property without intervening use by

1 such person, or (c) purchases for the purpose of consuming the property  
2 purchased in producing for sale a new article of tangible personal  
3 property or substance, of which such property becomes an ingredient or  
4 component or is a chemical used in processing, when the primary purpose  
5 of such chemical is to create a chemical reaction directly through  
6 contact with an ingredient of a new article being produced for sale, or  
7 (d) purchases for the purpose of consuming the property purchased in  
8 producing ferrosilicon which is subsequently used in producing  
9 magnesium for sale, if the primary purpose of such property is to  
10 create a chemical reaction directly through contact with an ingredient  
11 of ferrosilicon, or (e) purchases for the purpose of providing the  
12 property to consumers as part of competitive telephone service, as  
13 defined in RCW 82.04.065. The term shall include every sale of  
14 tangible personal property which is used or consumed or to be used or  
15 consumed in the performance of any activity classified as a "sale at  
16 retail" or "retail sale" even though such property is resold or  
17 utilized as provided in (a), (b), (c), (d), or (e) above following such  
18 use. The term also means every sale of tangible personal property to  
19 persons engaged in any business which is taxable under RCW 82.04.280,  
20 subsections (2) and (7) and RCW 82.04.290.

21 (2) The term "sale at retail" or "retail sale" shall include the  
22 sale of or charge made for tangible personal property consumed and/or  
23 for labor and services rendered in respect to the following: (a) The  
24 installing, repairing, cleaning, altering, imprinting, or improving of  
25 tangible personal property of or for consumers, including charges made  
26 for the mere use of facilities in respect thereto, but excluding  
27 charges made for the use of coin operated laundry facilities when such  
28 facilities are situated in an apartment house, hotel, motel, rooming  
29 house, trailer camp or tourist camp for the exclusive use of the  
30 tenants thereof, and also excluding sales of laundry service to members  
31 by nonprofit associations composed exclusively of nonprofit hospitals,  
32 and excluding services rendered in respect to live animals, birds and  
33 insects; (b) the constructing, repairing, decorating, or improving of  
34 new or existing buildings or other structures under, upon, or above  
35 real property of or for consumers, including the installing or  
36 attaching of any article of tangible personal property therein or  
37 thereto, whether or not such personal property becomes a part of the  
38 realty by virtue of installation, and shall also include the sale of  
39 services or charges made for the clearing of land and the moving of

1 earth excepting the mere leveling of land used in commercial farming or  
2 agriculture; (c) the charge for labor and services rendered in respect  
3 to constructing, repairing, or improving any structure upon, above, or  
4 under any real property owned by an owner who conveys the property by  
5 title, possession, or any other means to the person performing such  
6 construction, repair, or improvement for the purpose of performing such  
7 construction, repair, or improvement and the property is then  
8 reconveyed by title, possession, or any other means to the original  
9 owner; (d) the sale of or charge made for labor and services rendered  
10 in respect to the cleaning, fumigating, razing or moving of existing  
11 buildings or structures, but shall not include the charge made for  
12 janitorial services; and for purposes of this section the term  
13 "janitorial services" shall mean those cleaning and caretaking services  
14 ordinarily performed by commercial janitor service businesses  
15 including, but not limited to, wall and window washing, floor cleaning  
16 and waxing, and the cleaning in place of rugs, drapes and upholstery.  
17 The term "janitorial services" does not include painting, papering,  
18 repairing, furnace or septic tank cleaning, snow removal or  
19 sandblasting; (e) the sale of or charge made for labor and services  
20 rendered in respect to automobile towing and similar automotive  
21 transportation services, but not in respect to those required to report  
22 and pay taxes under chapter 82.16 RCW; (f) the sale of and charge made  
23 for the furnishing of lodging and all other services by a hotel,  
24 rooming house, tourist court, motel, trailer camp, and the granting of  
25 any similar license to use real property, as distinguished from the  
26 renting or leasing of real property, and it shall be presumed that the  
27 occupancy of real property for a continuous period of one month or more  
28 constitutes a rental or lease of real property and not a mere license  
29 to use or enjoy the same; (g) the sale of or charge made for tangible  
30 personal property, labor and services to persons taxable under (a),  
31 (b), (c), (d), (e), and (f) above when such sales or charges are for  
32 property, labor and services which are used or consumed in whole or in  
33 part by such persons in the performance of any activity defined as a  
34 "sale at retail" or "retail sale" even though such property, labor and  
35 services may be resold after such use or consumption. Nothing  
36 contained in this paragraph shall be construed to modify the first  
37 paragraph of this section and nothing contained in the first paragraph  
38 of this section shall be construed to modify this paragraph.

1 (3) The term "sale at retail" or "retail sale" shall include the  
2 sale of or charge made for personal business or professional services  
3 including amounts designated as interest, rents, fees, admission, and  
4 other service emoluments however designated, received by persons  
5 engaging in the following business activities: (a) Amusement and  
6 recreation businesses including but not limited to golf, pool,  
7 billiards, skating, bowling, ski lifts and tows and others; (b)  
8 abstract, title insurance and escrow businesses; (c) credit bureau  
9 businesses; (d) automobile parking and storage garage businesses; (e)  
10 nursing facilities licensed under chapter 18.51 RCW.

11 (4) The term shall also include the renting or leasing of tangible  
12 personal property to consumers.

13 (5) The term shall also include the providing of telephone service,  
14 as defined in RCW 82.04.065, to consumers.

15 (6) The term shall not include the sale of or charge made for labor  
16 and services rendered in respect to the building, repairing, or  
17 improving of any street, place, road, highway, easement, right of way,  
18 mass public transportation terminal or parking facility, bridge,  
19 tunnel, or trestle which is owned by a municipal corporation or  
20 political subdivision of the state or by the United States and which is  
21 used or to be used primarily for foot or vehicular traffic including  
22 mass transportation vehicles of any kind. The term shall also not  
23 include sales of feed, seed, seedlings, fertilizer, and spray materials  
24 to persons who participate in the federal conservation reserve program  
25 or its successor administered by the United States department of  
26 agriculture, or to persons for the purpose of producing for sale any  
27 agricultural product whatsoever, including plantation Christmas trees  
28 and milk, eggs, wool, fur, meat, honey, or other substances obtained  
29 from animals, birds, or insects but only when such production and  
30 subsequent sale are exempt from tax under RCW 82.04.330, nor shall it  
31 include sales of chemical sprays or washes to persons for the purpose  
32 of post-harvest treatment of fruit for the prevention of scald, fungus,  
33 mold, or decay.

34 (7) The term shall not include the sale of or charge made for labor  
35 and services rendered in respect to the constructing, repairing,  
36 decorating, or improving of new or existing buildings or other  
37 structures under, upon, or above real property of or for the United  
38 States, any instrumentality thereof, or a county or city housing  
39 authority created pursuant to chapter 35.82 RCW, including the

1 installing, or attaching of any article of tangible personal property  
2 therein or thereto, whether or not such personal property becomes a  
3 part of the realty by virtue of installation. Nor shall the term  
4 include the sale of services or charges made for the clearing of land  
5 and the moving of earth of or for the United States, any  
6 instrumentality thereof, or a county or city housing authority.

7 **Sec. 2.** RCW 74.46.481 and 1991 sp.s. c 8 s 16 are each amended to  
8 read as follows:

9 (1) The nursing services cost center shall include all costs  
10 related to the direct provision of nursing and related care, including  
11 fringe benefits and payroll taxes for the nursing and related care  
12 personnel. ~~((For rates effective for state fiscal year 1984,))~~ The  
13 department shall adopt by administrative rule a definition of "related  
14 care" ~~((which shall incorporate, but not exceed services reimbursable  
15 as of June 30, 1983. For rates effective for state fiscal year 1985,  
16 the definition of related care shall include ancillary care))~~. For  
17 rates effective after June 30, 1991, nursing services costs, as  
18 reimbursed within this chapter and as tested for reasonableness within  
19 this section, shall not include costs of any purchased nursing care  
20 services, including registered nurse, licensed practical nurse, and  
21 nurse assistant services, obtained through service contract arrangement  
22 in excess of one and one-half times the amount of compensation paid for  
23 such hours of nursing care service had they been paid at the average  
24 hourly wage, including related taxes and benefits, for in-house nursing  
25 care staff of like classification at the same nursing facility, as  
26 reported in the most recent cost report period.

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

30 (3) Utilizing regression or other statistical technique, the  
31 department shall determine a reasonable limit on facility nursing staff  
32 taking into account facility patient characteristics. For purposes of  
33 this section, facility nursing staff refers to registered nurses,  
34 licensed practical nurses and nursing assistants employed by the  
35 facility or obtained through temporary labor contract arrangements.  
36 Effective January 1, 1988, the hours associated with the training of  
37 nursing assistants and the supervision of that training for nursing  
38 assistants shall not be included in the calculation of facility nursing

1 staff. In selecting a measure of patient characteristics, the  
2 department shall take into account:

3 (a) The correlation between alternative measures and facility  
4 nursing staff; and

5 (b) The cost of collecting information for and computation of a  
6 measure.

7 If regression is used, the limit shall be set at predicted nursing  
8 staff plus 1.75 regression standard errors. If another statistical  
9 method is utilized, the limit shall be set at a level corresponding to  
10 1.75 standard errors above predicted staffing computed according to a  
11 regression procedure.

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

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

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)) (5) 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)) (6) The department is authorized to determine on a systematic  
33 basis facilities with unmet patient care service needs. The department  
34 may increase the nursing services cost center prospective rate for a  
35 facility ((beyond the level determined in accordance with subsection  
36 (6) of this section)) if the facility's actual and reported nursing  
37 staffing is one standard error or more below predicted staffing as  
38 determined according to the method selected pursuant to subsection (3)  
39 of this section and the facility has unmet patient care service needs:

1 PROVIDED, That prospective rate increases authorized by this subsection  
2 shall be funded only from legislative appropriations made for this  
3 purpose and the increases shall be conditioned on specified  
4 improvements in patient care at such facilities.

5 ~~((+10))~~ (7) The department shall establish a method for  
6 identifying patients with exceptional care requirements and a method  
7 for establishing or negotiating on a consistent basis rates for such  
8 patients.

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

- 19 (a) Increases in acuity levels of contractors' residents;
  - 20 (b) Staffing patterns for similar facilities;
  - 21 (c) Physical plant of contractor; and
  - 22 (d) Survey, inspection of care, and department consultation
- 23 results.

24 **Sec. 3.** RCW 74.46.020 and 1991 sp.s. c 8 s 11 are each amended to  
25 read as follows:

26 Unless the context clearly requires otherwise, the definitions in  
27 this section apply throughout this chapter.

28 (1) "Accrual method of accounting" means a method of accounting in  
29 which revenues are reported in the period when they are earned,  
30 regardless of when they are collected, and expenses are reported in the  
31 period in which they are incurred, regardless of when they are paid.

32 (2) "Ancillary care" means those services required by the  
33 individual, comprehensive plan of care provided by qualified  
34 therapists.

35 (3) "Appraisal" means the process of estimating the fair market  
36 value or reconstructing the historical cost of an asset acquired in a  
37 past period as performed by a professionally designated real estate  
38 appraiser with no pecuniary interest in the property to be appraised.



1 It includes a systematic, analytic determination and the recording and  
2 analyzing of property facts, rights, investments, and values based on  
3 a personal inspection and inventory of the property.

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

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

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

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

21 (8) "Beneficial owner" means:

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

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

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

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

34 (c) Any person who, subject to subparagraph (b) of this subsection,  
35 has the right to acquire beneficial ownership of such ownership  
36 interest within sixty days, including but not limited to any right to  
37 acquire:

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

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

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

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

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

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

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

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

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

33 (9) "Capitalization" means the recording of an expenditure as an  
34 asset.

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

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

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

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

7 (14) "Entity" means an individual, partnership, corporation, or any  
8 other association of individuals capable of entering enforceable  
9 contracts.

10 (15) "Equity" means the net book value of all tangible and  
11 intangible assets less the recorded value of all liabilities, as  
12 recognized and measured in conformity with generally accepted  
13 accounting principles.

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

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

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

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

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

30 ~~((21))~~ (20) "Generally accepted auditing standards" means  
31 auditing standards approved by the American institute of certified  
32 public accountants (AICPA).

33 ~~((22))~~ (21) "Goodwill" means the excess of the price paid for a  
34 business over the fair market value of all other identifiable,  
35 tangible, and intangible assets acquired.

36 ~~((23))~~ (22) "Historical cost" means the actual cost incurred in  
37 acquiring and preparing an asset for use, including feasibility  
38 studies, architect's fees, and engineering studies.

1       (~~(24)~~) (23) "Imprest fund" means a fund which is regularly  
2 replenished in exactly the amount expended from it.

3       (~~(25)~~) (24) "Joint facility costs" means any costs which  
4 represent resources which benefit more than one facility, or one  
5 facility and any other entity.

6       (~~(26)~~) (25) "Lease agreement" means a contract between two  
7 parties for the possession and use of real or personal property or  
8 assets for a specified period of time in exchange for specified  
9 periodic payments. Elimination (due to any cause other than death or  
10 divorce) or addition of any party to the contract, expiration, or  
11 modification of any lease term in effect on January 1, 1980, or  
12 termination of the lease by either party by any means shall constitute  
13 a termination of the lease agreement. An extension or renewal of a  
14 lease agreement, whether or not pursuant to a renewal provision in the  
15 lease agreement, shall be considered a new lease agreement. A strictly  
16 formal change in the lease agreement which modifies the method,  
17 frequency, or manner in which the lease payments are made, but does not  
18 increase the total lease payment obligation of the lessee, shall not be  
19 considered modification of a lease term.

20       (~~(27)~~) (26) "Medical care program" means medical assistance  
21 provided under RCW 74.09.500 or authorized state medical care services.

22       (~~(28)~~) (27) "Medical care recipient" or "recipient" means an  
23 individual determined eligible by the department for the services  
24 provided in chapter 74.09 RCW.

25       (~~(29)~~) (28) "Net book value" means the historical cost of an  
26 asset less accumulated depreciation.

27       (~~(30)~~) (29) "Net invested funds" means the net book value of  
28 tangible fixed assets employed by a contractor to provide services  
29 under the medical care program, including land, buildings, and  
30 equipment as recognized and measured in conformity with generally  
31 accepted accounting principles, plus an allowance for working capital  
32 which shall be five percent of the allowable costs of each contractor  
33 for the previous calendar year.

34       (~~(31)~~) (30) "Operating lease" means a lease under which rental or  
35 lease expenses are included in current expenses in accordance with  
36 generally accepted accounting principles.

37       (~~(32)~~) (31) "Owner" means a sole proprietor, general or limited  
38 partners, and beneficial interest holders of five percent or more of a  
39 corporation's outstanding stock.

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

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

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

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

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

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

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

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

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

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

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

34       (h) An occupational therapist who is a graduate of a program in  
35 occupational therapy, or who has the equivalent of such education or  
36 training.

37       (~~(37)~~) (36) "Questioned costs" means those costs which have been  
38 determined in accordance with generally accepted accounting principles  
39 but which may constitute disallowed costs or departures from the

1 provisions of this chapter or rules and regulations adopted by the  
2 department.

3 ~~((38))~~ (37) "Records" means those data supporting all financial  
4 statements and cost reports including, but not limited to, all general  
5 and subsidiary ledgers, books of original entry, and transaction  
6 documentation, however such data are maintained.

7 ~~((39))~~ (38) "Related organization" means an entity which is under  
8 common ownership and/or control with, or has control of, or is  
9 controlled by, the contractor.

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

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

17 ~~((40))~~ (39) "Restricted fund" means those funds the principal  
18 and/or income of which is limited by agreement with or direction of the  
19 donor to a specific purpose.

20 ~~((41))~~ (40) "Secretary" means the secretary of the department of  
21 social and health services.

22 ~~((42))~~ (41) "Title XIX" or "Medicaid" means the 1965 amendments  
23 to the social security act, P.L. 89-07, as amended.

24 ~~((43))~~ (42) "Physical plant capital improvement" means a  
25 capitalized improvement that is limited to an improvement to the  
26 building or the related physical plant.

27 **Sec. 4.** RCW 74.46.380 and 1991 sp.s. c 8 s 12 are each amended to  
28 read as follows:

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

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

37 ~~((3) If there is a sale of a nursing facility on or after July 1,  
38 1991, that results in a gain on sale, the actual reimbursement for~~

1 ~~depreciation paid to the selling contractor through the medicaid~~  
2 ~~reimbursement program shall be recovered by the department to the~~  
3 ~~extent of any gain on sale. The purchaser is obligated to reimburse~~  
4 ~~the department, whether or not the purchaser is a medicaid contractor.~~  
5 ~~If the department is unable to collect from the purchaser, then the~~  
6 ~~seller is responsible for reimbursing the department. The department~~  
7 ~~may establish an appropriate repayment schedule to recover~~  
8 ~~depreciation. If the purchaser is a medicaid contractor and the~~  
9 ~~contractor does not comply with the repayment schedule established by~~  
10 ~~the department, the department may deduct the recovery from the~~  
11 ~~contractor's monthly medicaid payments. The department may adopt~~  
12 ~~rules, as appropriate, to insure that the principles of this section~~  
13 ~~are implemented with respect to leased assets, or with respect to sales~~  
14 ~~of intangibles or specific assets only.))~~

15 **Sec. 5.** 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 return  
18 on investment allowances composed of two parts: A financing allowance  
19 and a variable return allowance.

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

27 (b) In computing the portion of net invested funds representing the  
28 net book value of tangible fixed assets, the same assets, depreciation  
29 bases, lives, and methods referred to in RCW 74.46.330, 74.46.350,  
30 74.46.360, 74.46.370, and 74.46.380, including owned and leased assets,  
31 shall be utilized, except that the capitalized cost of land upon which  
32 the facility is located and such other contiguous land which is  
33 reasonable and necessary for use in the regular course of providing  
34 patient care shall also be included. Subject to provisions and  
35 limitations contained in this chapter, for land purchased by owners or  
36 lessors before July 18, 1984, capitalized cost of land shall be the  
37 buyer's capitalized cost. For all partial or whole rate periods after  
38 July 17, 1984, if the land is purchased after July 17, 1984,

1 capitalized cost shall be that of the owner of record on July 17, 1984,  
2 or buyer's capitalized cost, whichever is lower. In the case of leased  
3 facilities where the net invested funds are unknown or the contractor  
4 is unable to provide necessary information to determine net invested  
5 funds, the secretary shall have the authority to determine an amount  
6 for net invested funds based on an appraisal conducted according to RCW  
7 74.46.360(1).

8 (c) The provisions of (a) and (b) of this subsection do not apply  
9 to an arm's-length transaction that occurs on or after July 1, 1993.  
10 When land and depreciable assets are acquired in an arm's-length  
11 transaction on or after July 1, 1993, the depreciable base of those  
12 assets shall be the historical cost to the buyer increased by the  
13 lesser of the following two percentages:

14 (i) One-half of the percentage increase, as measured over the same  
15 period of time, in the Dodge construction systems costs for nursing  
16 homes, applied in the aggregate with respect to those facilities that  
17 have undergone a change of ownership during the fiscal year; or

18 (ii) One-half of the percentage increase, as measured over the same  
19 period of time, in the consumer price index for all urban consumers  
20 (United States City average).

21 (d) In determining the variable return allowance:

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

26 (ii) The department shall then compute the variable return  
27 allowance by multiplying the appropriate percentage amounts, which  
28 shall not be less than one percent and not greater than four percent,  
29 by the total prospective rate for each facility, as determined in RCW  
30 74.46.450 through 74.46.510. The percentage amounts will be based on  
31 groupings of facilities according to the rankings as established in (i)  
32 of this subsection (1)((+e))(d). Those groups of facilities with  
33 lower per diem costs shall receive higher percentage amounts than those  
34 with higher per diem costs.

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



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

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

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

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

34       (~~(f)~~) (g) In the case of a facility which was leased by the  
35 contractor as of January 1, 1980, in an arm's-length agreement, if the  
36 lease is renewed or extended pursuant to a provision of the lease, the  
37 treatment provided in subsection (1)(~~(e)~~)(f) of this section shall be  
38 applied except that in the case of renewals or extensions made  
39 subsequent to April 1, 1985, reimbursement for the annualized lease

1 payment shall be no greater than the reimbursement for the annualized  
2 lease payment for the last year prior to the renewal or extension of  
3 the lease.

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

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

18 **Sec. 6.** RCW 74.46.495 and 1983 1st ex.s. c 67 s 26 are each  
19 amended to read as follows:

20 (1) References in RCW 74.46.490 and 74.46.481 to adjustments for  
21 inflation mean (~~percentages determined by the legislature in the~~  
22 ~~biennial budget act~~) the federal health care financing  
23 administration's eighteen-month nursing home market basket index.

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

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

28 (b) In the nursing services cost center rates beginning July 1,  
29 1984, and the administration and operations cost center rate, the  
30 adjustments in subsection (1) of this section shall be applied to prior  
31 period annual costs in establishing July rates. Where a July rate is  
32 based upon a cost report covering less than twelve months, the  
33 department shall reduce the inflation adjustment factor in subsection  
34 (1) of this section proportionately.

35 NEW SECTION. **Sec. 7.** A new section is added to chapter 74.46 RCW  
36 to read as follows:

1 (1) The legislature finds that the retrospective aspects of the  
2 current reimbursement system frequently make it difficult for  
3 facilities with a disproportionate share of medicaid residents to fund  
4 needed improvements, because such facilities have less private patient  
5 revenue available to finance needed improvements. The intent of this  
6 section is to create a fund to be divided among facilities with a  
7 disproportionate share of medicaid residents in proportion to their  
8 share of medicaid residents, which will allow such facilities to fund  
9 needed improvements.

10 (2) There is hereby created a disproportionate share fund.

11 (a) For fiscal year 1994, the amount of the fund shall be  
12 determined by the formula  $F = (((TR - SS - PP) \div 2) + FFP) - C$ , where

13 F is the total disproportionate share fund;

14 TR is the total revenue forecast to be generated during fiscal  
15 year 1994 by the tax imposed on residents of licensed  
16 nursing facilities under chapter 82.08 RCW;

17 SS is the state share of the taxes paid on account of medicaid  
18 residents;

19 PP is the cost of any program to assist private residents in  
20 meeting the costs of nursing facility care without applying  
21 for medicaid;

22 FFP is the federal financial participation amount attributable  
23 to the increased expenditures made under the 1993 amendments  
24 to RCW 74.46.481, 74.46.020, 74.46.380, 74.46.530, and  
25 74.46.495 contained in chapter . . . , Laws of 1993 (this  
26 act); and

27 C is the state share of the increased expenditures  
28 attributable to the 1993 amendments to RCW 74.46.481,  
29 74.46.020, 74.46.380, 74.46.530, and 74.46.495 contained in  
30 chapter . . . , Laws of 1993 (this act).

31 (b) For all fiscal years subsequent to 1994, the amount of the fund  
32 shall be determined by the formula  $F = (TR - FT) \times TY$ , where

33 F is the amount of the disproportionate share fund for the  
34 current fiscal year;

35 TR is the total revenue forecast to be generated during fiscal  
36 year 1994 by the tax imposed on residents of licensed  
37 nursing facilities under chapter 82.08 RCW;

38 FT is the amount of the disproportionate share fund for fiscal  
39 year 1994; and

1 TY is the total revenue forecast to be generated during the  
2 current fiscal year by the tax imposed on residents of  
3 licensed nursing facilities under chapter 82.08 RCW.

4 (c) The disproportionate share fund shall be distributed among  
5 facilities having a percentage of medicaid patient days higher than the  
6 state average by the formula  $A = (TPD \times (F - TMD)) / 365$ , where

7 A is the amount to be added to the facility's per patient day  
8 rate;

9 TPD is the facility's total number of medicaid patient days;

10 F is the total disproportionate share fund; and

11 TMD is the total number of medicaid patient days provided by  
12 facilities having a percentage of medicaid patient days  
13 higher than the state average.

14 (d) The department shall establish by rule the figures defined in  
15 this section. The notice of proposed rule making shall include all  
16 calculations and underlying assumptions and statistics on which the  
17 figures are based.

18 NEW SECTION. **Sec. 8.** A new chapter is added to Title 82 RCW to  
19 read as follows:

20 (1) The legislature finds that many of the costs of nursing  
21 facility care for the elderly and disabled are currently uninsured.  
22 Many elderly and disabled persons are paying for the costs of such care  
23 out of their own resources, at great personal sacrifice, rather than  
24 relying on government assistance. The legislature believes that it is  
25 more cost-effective overall to assist private residents in meeting the  
26 costs of their care than to pay the full cost of their care through the  
27 medicaid program. Accordingly, the legislature intends to create a  
28 program that will recognize the sacrifices private residents of nursing  
29 facilities make and at least partially offset their medical expenses.

30 (2) As used in this section, unless the context requires otherwise:

31 (a) "Out of pocket expenses" are expenses that are actually paid by  
32 the patient or an agent acting on the patient's behalf and that are not  
33 reimbursed through medicare, medicaid, or private insurance.

34 (b) "Department" means the department of revenue.

35 (3) The program shall be available to any nursing facility resident  
36 who:

37 (a) In any month, pays at least twelve hundred dollars in out of  
38 pocket expenses to a nursing facility in the state of Washington;

1 (b) Does not have any portion of the charges for that month paid by  
2 the medicare or medicaid programs; and

3 (c) Submits an application for private patient assistance on a form  
4 defined by the department.

5 (4)(a) For fiscal year 1994, the amount of payment shall be one  
6 hundred sixty dollars for each month for which an applicant is  
7 eligible. The department shall increase this amount annually by the  
8 growth in the medical cost component of the consumer price index.

9 (b) Payment shall be made at least quarterly directly to the  
10 applicant or to an agent appointed by the applicant in writing to  
11 manage the applicant's financial affairs. The right to payment shall  
12 not be transferable, assignable, or subject to legal process, except by  
13 such appointment or by proceedings to settle the estate of a decedent  
14 entitled to such payment. The department shall establish by rule  
15 procedures by which the personal representative of a decedent's estate  
16 may obtain payments to which the decedent was entitled.

17 (5) The legislature recognizes and intends that this program shall  
18 be funded purely by state general fund moneys, and that it shall have  
19 no relationship to the medical assistance program. However, in the  
20 event that this program results in a disallowance of federal financial  
21 participation in the medicaid program by the federal department of  
22 health and human services, the program shall terminate.

23 NEW SECTION. **Sec. 9.** This act is necessary for the immediate  
24 preservation of the public peace, health, or safety, or support of the  
25 state government and its existing public institutions, and shall take  
26 effect June 30, 1993.

--- END ---