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**SUBSTITUTE HOUSE BILL 2761**

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**State of Washington**

**53rd Legislature**

**1994 Regular Session**

**By** House Committee on Health Care (originally sponsored by Representatives G. Fisher, Patterson, J. Kohl, Brown, Horn, Foreman, Edmondson, Cooke and Long)

Read first time 02/04/94.

1 AN ACT Relating to nursing home contractor costs; and amending RCW  
2 74.46.105 and 74.46.481.

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

4 **Sec. 1.** RCW 74.46.105 and 1985 c 361 s 10 are each amended to read  
5 as follows:

6 Cost reports and patient trust accounts of contractors shall be  
7 field audited by the department, either by department staff or by  
8 auditors under contract to the department, in accordance with the  
9 provisions of this chapter. The department when it deems necessary to  
10 assure the accuracy of cost reports may review any underlying financial  
11 statements or other records upon which the cost reports are based. The  
12 department shall have the authority to accept or reject audits which  
13 fail to satisfy the requirements of this section or which are performed  
14 by auditors who violate any of the rules of this section. Department  
15 audits of the cost reports and patient trust accounts shall be  
16 conducted as follows:

17 (1) Each year the department will provide for field audit of the  
18 cost report, statistical reports, and patient trust funds, as  
19 established by RCW 74.46.700, of all or a sample of reporting

1 facilities selected by profiles of costs, exceptions, contract  
2 terminations, upon special requests or other factors determined by the  
3 department.

4 (2) Beginning with audits for calendar year 1983, up to one hundred  
5 percent of contractors cost reports and patient care trust fund  
6 accounts shall be audited: PROVIDED, That each contractor shall be  
7 audited at least once in every (~~three-year~~) five-year period.

8 (3) Facilities shall be selected for sample audits within one  
9 hundred twenty days of submission of a correct and complete cost  
10 report, and shall be so informed of the department's intent to audit.  
11 Audits so scheduled shall be completed within one year of selection.

12 (4) Where an audit for a recent reporting or trust fund period  
13 discloses material discrepancies, undocumented costs or mishandling of  
14 patient trust funds, auditors may examine prior unaudited periods, for  
15 indication of similar material discrepancies, undocumented costs or  
16 mishandling of patient trust funds for not more than (~~two~~) four  
17 reporting periods preceding the facility reporting period selected in  
18 the sample.

19 (5) The audit will result in a schedule summarizing appropriate  
20 adjustments to the contractor's cost report. These adjustments will  
21 include an explanation for the adjustment, the general ledger account  
22 or account group, and the dollar amount. Patient trust fund audits  
23 shall be reported separately and in accordance with RCW 74.46.700.

24 (6) Audits shall meet generally accepted auditing standards as  
25 promulgated by the American institute of certified public accountants  
26 and the standards for audit of governmental organizations, programs,  
27 activities and functions as published by the comptroller general of the  
28 United States. Audits shall be supervised or reviewed by a certified  
29 public accountant.

30 (7) No auditor under contract with or employed by the department to  
31 perform audits in accordance with the provisions of this chapter shall:

32 (a) Have had direct or indirect financial interest in the  
33 ownership, financing or operation of a nursing home in this state  
34 during the period covered by the audits;

35 (b) Acquire or commit to acquire any direct or indirect financial  
36 interest in the ownership, financing or operation of a nursing home in  
37 this state during said auditor's employment or contract with the  
38 department;

1 (c) Accept as a client any nursing home in this state during or  
2 within two years of termination of said auditor's contract or  
3 employment with the department.

4 (8) Audits shall be conducted by auditors who are otherwise  
5 independent as determined by the standards of independence established  
6 by the American institute of certified public accountants.

7 (9) All audit rules adopted after March 31, 1984, shall be  
8 published before the beginning of the cost report year to which they  
9 apply.

10 **Sec. 2.** RCW 74.46.481 and 1993 sp.s. c 13 s 12 are each amended to  
11 read as follows:

12 (1) The nursing services cost center shall include for reporting  
13 and audit purposes all costs related to the direct provision of nursing  
14 and related care, including fringe benefits and payroll taxes for the  
15 nursing and related care personnel, and the cost of nursing supplies.  
16 The department shall adopt by administrative rule a definition of  
17 "related care". For rates effective after June 30, 1991, nursing  
18 services costs, as reimbursed within this chapter, shall not include  
19 costs of any purchased nursing care services, including registered  
20 nurse, licensed practical nurse, and nurse assistant services, obtained  
21 through service contract arrangement in excess of the amount of  
22 compensation paid for such hours of nursing care service had they been  
23 paid at the average hourly wage, including related taxes and benefits,  
24 for in-house nursing care staff of like classification at the same  
25 nursing facility, as reported in the most recent cost report period.

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

29 (3) Utilizing regression or other statistical technique, the  
30 department shall determine a reasonable limit on facility nursing staff  
31 taking into account facility patient characteristics. For purposes of  
32 this section, facility nursing staff refers to registered nurses,  
33 licensed practical nurses and nursing assistants employed by the  
34 facility or obtained through temporary labor contract arrangements.  
35 Effective January 1, 1988, the hours associated with the training of  
36 nursing assistants and the supervision of that training for nursing  
37 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. A regression calculated shall be effective for  
12 the entire biennium.

13 (4) No facility shall receive reimbursement for nursing staff  
14 levels in excess of the limit. However, nursing staff levels  
15 established under subsection (3) of this section shall not apply to the  
16 nursing services cost center reimbursement rate only for the pilot  
17 facility especially designed to meet the needs of persons living with  
18 AIDS as defined by RCW 70.24.017 and specifically authorized for this  
19 purpose under the 1989 amendment to the Washington state health plan.

20 (5) Every two years when rates are set at the beginning of each new  
21 biennium, the department shall divide into two peer groups nursing  
22 facilities located in the state of Washington providing services to  
23 medicaid residents: (a) Those facilities located within a metropolitan  
24 statistical area as defined and determined by the United States office  
25 of management and budget or other applicable federal office and (b)  
26 those not located in such an area. The facilities in each peer group  
27 shall then be arrayed from lowest to highest by magnitude of per  
28 patient day adjusted nursing services cost from the prior report year,  
29 regardless of whether any such adjustments are contested by the nursing  
30 facility, and the median or fiftieth percentile cost for each peer  
31 group shall be determined. Nursing services rates for facilities  
32 within each peer group for the first year of the biennium shall be set  
33 at the lower of the facility's adjusted per patient day nursing  
34 services cost from the prior report period or the median cost for the  
35 facility's peer group plus twenty-five percent. This rate shall be  
36 reduced or inflated as authorized by RCW 74.46.420. However, the per  
37 patient day peer group median cost plus twenty-five percent limit shall  
38 not apply to the nursing services cost center reimbursement rate only  
39 for the pilot facility especially designed to meet the needs of persons

1 living with AIDS as defined by RCW 70.24.017 and specifically  
2 authorized for this purpose under the 1989 amendment to the Washington  
3 state health plan.

4 (6) If a nursing facility is impacted by the limit authorized in  
5 subsection (5) of this section, it shall not receive a prospective rate  
6 in nursing services for July 1, (~~(1993)~~) 1995, less than the same  
7 facility's prospective rate in nursing services as of June 30, (~~(1993,~~  
8 ~~adjusted by any increase in the implicit price deflator for personal~~  
9 ~~consumption expenditures, IPD index, as measured over the period~~  
10 ~~authorized by RCW 74.46.420(3))~~) 1995.

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

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

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

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

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

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

19 (a) Increases in debility levels of contractors' residents  
20 determined in accordance with the department's assessment and reporting  
21 procedures and requirements utilizing the minimum data set;

22 (b) Staffing patterns for similar facilities in the same peer  
23 group;

24 (c) Physical plant of contractor; and

25 (d) Survey, inspection of care, and department consultation  
26 results.

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