S-1335.1

SUBSTITUTE SENATE BILL 5179

State of Washington 55th Legislature 1997 Regular Session

By Senate Committee on Health & Long-Term Care (originally sponsored by Senators Deccio, Prentice and Wood)

Read first time 02/19/97.

AN ACT Relating to nursing facility reimbursement; and amending RCW 74.46.360, 74.46.370, 74.46.465, 74.46.510, and 74.46.530.

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

Sec. 1. RCW 74.46.360 and 1991 sp.s. c 8 s 18 are each amended to read as follows:

(1) For all partial or whole rate periods after December 31, 1984, the cost basis of land and depreciation base of depreciable assets shall be the historical cost of the contractor or lessor, when the assets are leased by the contractor, in acquiring the asset in an arm's-length transaction and preparing it for use, less goodwill, and less accumulated depreciation, if applicable, which has been incurred during periods that the assets have been used in or as a facility by any contractor, such accumulated depreciation to be measured in accordance with subsections ((~~(2), (3), and~~)) (4), (5), and (6) of this section and RCW 74.46.350 and 74.46.370. If the department challenges the historical cost of an asset, or if the contractor cannot or will not provide the historical costs, the department will have the department of general administration, through an appraisal procedure, determine the fair market value of the assets at the time of purchase.

The cost basis of land and depreciation base of depreciable assets will not exceed such fair market value.

(2) For new or replacement building construction or for substantial building additions requiring the acquisition of land and which commenced to operate on or after July 1, 1997, the department shall determine allowable land costs to be the lesser of:

(a) The contractor's or lessor's actual cost per square foot; or

(b) The square foot land value as established by an appraisal that meets the latest publication of the Uniform Standards of Professional Appraisal Practice (USPAP) and the financial institutions reform, recovery, and enhancement act (FIRREA).

(3) Subject to the provisions of subsection (2) of this section, if, in the course of financing a project, an arm's-length lender has ordered a Uniform Standards of Professional Appraisal Practice appraisal on the land that meets financial institutions reform, recovery, and enhancement act standards and the arm's-length lender has accepted the ordered appraisal, the department shall accept the appraisal value as allowable land costs for calculation of payment.

If the contractor or lessor is unable or unwilling to provide or cause to be provided to the department, or the department is unable to obtain from the arm's-length lender, a lender-approved appraisal that meets the standards of the Uniform Standards of Professional Appraisal Practice and financial institutions reform, recovery, and enhancement act, the department shall order such an appraisal and accept the appraisal as the allowable land costs. If the department orders the Uniform Standards of Professional Appraisal Practice and financial institutions reform, recovery, and enhancement act appraisal, the contractor shall immediately reimburse the department for the costs incurred.

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

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

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

((~~(3)~~)) (5) Estimated salvage value of acquired, donated, or inherited assets shall be deducted from historical cost where the straight-line or sum-of-the-years' digits method of depreciation is used.

((~~(4)~~)) (6)(a) For facilities, other than those described under subsection (2) of this section, operating prior to July 1, 1997, where land or depreciable assets are acquired that were used in the medical care program subsequent to January 1, 1980, the cost basis or depreciation base of the assets will not exceed the net book value which did exist or would have existed had the assets continued in use under the previous contract with the department; except that depreciation shall not be assumed to accumulate during periods when the assets were not in use in or as a facility.

(b) The provisions of (a) of this subsection shall not apply to the most recent arm's-length acquisition if it occurs at least ten years after the ownership of the assets has been previously transferred in an arm's-length transaction nor to the first arm's-length acquisition that occurs after January 1, 1980, for facilities participating in the medical care program prior to January 1, 1980. The new cost basis or depreciation base for such acquisitions shall not exceed the fair market value of the assets as determined by the department of general administration through an appraisal procedure. A determination by the department of general administration of fair market value shall be final unless the procedure used to make such determination is shown to be arbitrary and capricious. For all partial or whole rate periods after July 17, 1984, this subsection is inoperative for any transfer of ownership of any asset, depreciable or nondepreciable, occurring on or after July 18, 1984, leaving (a) of this subsection to apply alone to such transfers: PROVIDED, HOWEVER, That this subsection shall apply to transfers of ownership of assets occurring prior to January 1, 1985, if the costs of such assets have never been reimbursed under medicaid cost reimbursement on an owner-operated basis or as a related-party lease: PROVIDED FURTHER, That for any contractor that can document in writing an enforceable agreement for the purchase of a nursing home dated prior to July 18, 1984, and submitted to the department prior to January 1, 1988, the cost basis of allowable land and the depreciation base of the nursing home, for rates established after July 18, 1984, shall not exceed the fair market value of the assets at the date of purchase as determined by the department of general administration through an appraisal procedure. For medicaid cost reimbursement purposes, an agreement to purchase a nursing home dated prior to July 18, 1984, is enforceable, even though such agreement contains no legal description of the real property involved, notwithstanding the statute of frauds or any other provision of law.

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

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

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

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

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

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

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

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

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

Sec. 2. RCW 74.46.370 and 1980 c 177 s 37 are each amended to read as follows:

(1) Except for new buildings, <u>major remodels, and major repair projects, as defined in subsection (2) of this section,</u> the contractor

shall use lives which reflect the estimated actual useful life of the asset and which shall be no shorter than guideline lives as established by the department. ((~~The shortest life which may be used for new buildings is thirty years.~~)) Lives shall be measured from the date on which the assets were first used in the medical care program or from the date of the most recent arm's-length acquisition of the asset, whichever is more recent. In cases where RCW 74.46.360((~~(4)~~)) (6)(a) does apply, the shortest life that may be used for buildings is the remaining useful life under the prior contract. In all cases, lives shall be extended to reflect periods, if any, when assets were not used in or as a facility.

(2) Effective July 1, 1997, the department shall use the most current edition of Estimated Useful Lives of Depreciable Hospital Assets, or as it may be renamed, published by the American Hospital Publishing, Inc., an American hospital association company, for determining the useful life of new buildings, major remodels, and major repair projects, however, the shortest life that may be used for new buildings is thirty years. New buildings, major remodels, and major repair projects include those projects that meet or exceed the expenditure minimum established by the department of health pursuant to chapter 70.38 RCW.

(3) Building improvements, other than major remodels and major repairs, shall be depreciated over the remaining useful life of the building, as modified by the improvement.

((~~(3)~~)) (4) Improvements to leased property which are the responsibility of the contractor under the terms of the lease shall be depreciated over the useful life of the improvement.

((~~(4)~~)) (5) A contractor may change the estimate of an asset's useful life to a longer life for purposes of depreciation.

Sec. 3. RCW 74.46.465 and 1987 c 476 s 8 are each amended to read as follows:

(1) The department, in consultation with interested parties, shall adopt rules to establish criteria the department will use in reviewing any request by a contractor for a prospective rate adjustment for a physical plant capital improvement. The rules shall also specify the time periods for submission and review of proposed physical plant capital improvements. In establishing the criteria, the department may consider, but is not limited to, the following:

(a) The remaining functional life of the facility and the length of time since the facility's last significant improvement;

(b) The amount and scope of renovation or remodel to the facility and whether the facility will be able to serve better the needs of its residents;

(c) Whether the proposed improvement improves the quality of the living conditions of the residents;

(d) Whether the proposed improvement might eliminate life safety, building code, or construction standard waivers;

(e) The percentage of public-pay residents in the facility.

(2) The department may adjust rates to cover state and county increases in real estate taxes, effective the first day on which the increased tax payment is due, related to construction qualifying for reimbursement under RCW 74.46.360(2).

(3) Rate adjustments under this section may be provided only if funds are appropriated for this purpose.

Sec. 4. RCW 74.46.510 and 1995 1st sp.s. c 18 s 108 are each amended to read as follows:

(1) The property cost center rate for each facility shall be determined by dividing the sum of the reported allowable prior period actual depreciation, subject to RCW 74.46.310 through 74.46.380, adjusted for any capitalized additions or replacements approved by the department, and the retained savings from such cost center, as provided in RCW 74.46.180, by the greater of a facility's total resident days for the facility in the prior period or resident days as calculated on ninety or eighty-five percent facility occupancy as applicable. If a capitalized addition or retirement of an asset will result in a different licensed bed capacity during the ensuing period, the prior period total resident days used in computing the property cost center rate shall be adjusted to anticipated resident day level.

(2) A nursing facility's property rate shall be rebased annually, effective July 1, in accordance with this section and this chapter.

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

(4) For the purpose of calculating a nursing facility's property component rate, if a contractor elects to bank licensed beds or to

convert banked beds to active service, pursuant to chapter 70.38 RCW, the department shall use the facility's anticipated resident occupancy level subsequent to the decrease or increase in licensed bed capacity; however, in no case shall the department use less than ninety percent occupancy of the facility's licensed bed capacity after banking or conversion.

Sec. 5. RCW 74.46.530 and 1995 1st sp.s. c 18 s 109 are each amended to read as follows:

(1) The department shall establish for each medicaid nursing facility a return on investment (ROI) rate composed of two parts: A financing allowance and a variable return allowance. The financing allowance part of a facility's return on investment component rate shall be rebased annually, effective July 1, in accordance with the provisions of this section and this chapter.

(a) The financing allowance shall be determined by multiplying the net invested funds of each facility by .10, and dividing by the greater of a nursing facility's total resident days from the most recent cost report period or resident days calculated on ninety percent or eighty-five percent facility occupancy as applicable. If a capitalized addition or retirement of an asset will result in a different licensed bed capacity during the ensuing period, the prior period total resident days used in computing the financing and variable return allowances shall be adjusted to the anticipated resident day level.

(b) In computing the portion of net invested funds representing the net book value of tangible fixed assets, the same assets, depreciation bases, lives, and methods referred to in RCW 74.46.330, 74.46.350, 74.46.360, 74.46.370, and 74.46.380, including owned and leased assets, shall be utilized, except that the capitalized cost of land upon which the facility is located and such other contiguous land which is reasonable and necessary for use in the regular course of providing resident care shall also be included. Subject to provisions and limitations contained in this chapter, for land purchased by owners or lessors before July 18, 1984, capitalized cost of land shall be the buyer's capitalized cost. For all partial or whole rate periods after July 17, 1984, if the land is purchased after July 17, 1984, capitalized cost shall be that of the owner of record on July 17, 1984, or buyer's capitalized cost, whichever is lower. In the case of leased facilities where the net invested funds are unknown or the contractor is unable to provide necessary information to determine net invested funds, the secretary shall have the authority to determine an amount for net invested funds based on an appraisal conducted according to RCW 74.46.360(1).

(c) In determining the variable return allowance:

(i) For July 1, 1995, rate setting only, the department, without utilizing peer groups, shall first rank all facilities in numerical order from highest to lowest according to their per resident day adjusted or audited, or both, allowable costs for nursing services, food, administrative, and operational costs combined for the 1994 calendar year cost report period.

(ii) The department shall then compute the variable return allowance by multiplying the appropriate percentage amounts, which shall not be less than one percent and not greater than four percent, by the sum of the facility's nursing services, food, administrative, and operational rate components. The percentage amounts will be based on groupings of facilities according to the rankings prescribed in (i) of this subsection (1)(c). The percentages calculated and assigned will remain the same for the variable return allowance paid in all July 1, 1996, and July 1, 1997, rates as well. Those groups of facilities with lower per diem costs shall receive higher percentage amounts than those with higher per diem costs.

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

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

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

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

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

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

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

(2) For the purpose of calculating a nursing facility's return on investment component rate, if a contractor elects to bank beds or to convert banked beds to active service, pursuant to chapter 70.38 RCW, the department shall use the facility's anticipated resident occupancy level subsequent to the decrease or increase in licensed bed capacity; however, in no case shall the department use less than ninety percent occupancy of the facility's licensed bed capacity after banking or conversion.

(3) Each biennium, beginning in 1985, the secretary shall review the adequacy of return on investment rates in relation to anticipated requirements for maintaining, reducing, or expanding nursing care capacity. The secretary shall report the results of such review to the

legislature and make recommendations for adjustments in the return on investment rates utilized in this section, if appropriate.

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