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SECOND SUBSTITUTE SENATE BILL 5179

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State of Washington

55th Legislature

1997 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Deccio, Prentice and Wood)

Read first time 03/10/97.

1 AN ACT Relating to nursing facility reimbursement; amending RCW  
2 74.46.360, 74.46.370, 74.46.430, 74.46.465, 74.46.510, and 74.46.530;  
3 and adding a new section to chapter 74.46 RCW.

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

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

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

1 determine the fair market value of the assets at the time of purchase.  
2 The cost basis of land and depreciation base of depreciable assets will  
3 not exceed such fair market value.

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

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

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

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

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

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

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

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

38 ~~((+3))~~ (5) Estimated salvage value of acquired, donated, or  
39 inherited assets shall be deducted from historical cost where the

1 straight-line or sum-of-the-years' digits method of depreciation is  
2 used.

3 ~~((4))~~ (6)(a) For facilities, other than those described under  
4 subsection (2) of this section, operating prior to July 1, 1997, where  
5 land or depreciable assets are acquired that were used in the medical  
6 care program subsequent to January 1, 1980, the cost basis or  
7 depreciation base of the assets will not exceed the net book value  
8 which did exist or would have existed had the assets continued in use  
9 under the previous contract with the department; except that  
10 depreciation shall not be assumed to accumulate during periods when the  
11 assets were not in use in or as a facility.

12 (b) The provisions of (a) of this subsection shall not apply to the  
13 most recent arm's-length acquisition if it occurs at least ten years  
14 after the ownership of the assets has been previously transferred in an  
15 arm's-length transaction nor to the first arm's-length acquisition that  
16 occurs after January 1, 1980, for facilities participating in the  
17 medical care program prior to January 1, 1980. The new cost basis or  
18 depreciation base for such acquisitions shall not exceed the fair  
19 market value of the assets as determined by the department of general  
20 administration through an appraisal procedure. A determination by the  
21 department of general administration of fair market value shall be  
22 final unless the procedure used to make such determination is shown to  
23 be arbitrary and capricious. For all partial or whole rate periods  
24 after July 17, 1984, this subsection is inoperative for any transfer of  
25 ownership of any asset, depreciable or nondepreciable, occurring on or  
26 after July 18, 1984, leaving (a) of this subsection to apply alone to  
27 such transfers: PROVIDED, HOWEVER, That this subsection shall apply to  
28 transfers of ownership of assets occurring prior to January 1, 1985, if  
29 the costs of such assets have never been reimbursed under medicaid cost  
30 reimbursement on an owner-operated basis or as a related-party lease:  
31 PROVIDED FURTHER, That for any contractor that can document in writing  
32 an enforceable agreement for the purchase of a nursing home dated prior  
33 to July 18, 1984, and submitted to the department prior to January 1,  
34 1988, the cost basis of allowable land and the depreciation base of the  
35 nursing home, for rates established after July 18, 1984, shall not  
36 exceed the fair market value of the assets at the date of purchase as  
37 determined by the department of general administration through an  
38 appraisal procedure. For medicaid cost reimbursement purposes, an  
39 agreement to purchase a nursing home dated prior to July 18, 1984, is

1 enforceable, even though such agreement contains no legal description  
2 of the real property involved, notwithstanding the statute of frauds or  
3 any other provision of law.

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

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

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

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

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

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

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

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

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

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

1       (1) Except for new buildings, major remodels, and major repair  
2 projects, as defined in subsection (2) of this section, the contractor  
3 shall use lives which reflect the estimated actual useful life of the  
4 asset and which shall be no shorter than guideline lives as established  
5 by the department. ((The shortest life which may be used for new  
6 buildings is thirty years.)) Lives shall be measured from the date on  
7 which the assets were first used in the medical care program or from  
8 the date of the most recent arm's-length acquisition of the asset,  
9 whichever is more recent. In cases where RCW 74.46.360((+4)) (6)(a)  
10 does apply, the shortest life that may be used for buildings is the  
11 remaining useful life under the prior contract. In all cases, lives  
12 shall be extended to reflect periods, if any, when assets were not used  
13 in or as a facility.

14       (2) Effective July 1, 1997, for asset acquisitions and new  
15 facilities, major remodels, and major repair projects that begin  
16 operations on or after July 1, 1997, the department shall use the most  
17 current edition of Estimated Useful Lives of Depreciable Hospital  
18 Assets, or as it may be renamed, published by the American Hospital  
19 Publishing, Inc., an American hospital association company, for  
20 determining the useful life of new buildings, major remodels, and major  
21 repair projects, however, the shortest life that may be used for new  
22 buildings is thirty years. New buildings, major remodels, and major  
23 repair projects include those projects that meet or exceed the  
24 expenditure minimum established by the department of health pursuant to  
25 chapter 70.38 RCW.

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

29       ((+3)) (4) Improvements to leased property which are the  
30 responsibility of the contractor under the terms of the lease shall be  
31 depreciated over the useful life of the improvement.

32       ((+4)) (5) A contractor may change the estimate of an asset's  
33 useful life to a longer life for purposes of depreciation.

34       **Sec. 3.** RCW 74.46.430 and 1995 1st sp.s. c 18 s 100 are each  
35 amended to read as follows:

36       (1) The department, as provided by this chapter, will determine  
37 prospective payment rates for services provided to medical care  
38 recipients. Each rate so determined shall represent the contractor's

1 maximum compensation within each cost center and for return on  
2 investment for each resident day for such medical care recipient.

3 (2) The department may modify such maximum per resident day rates,  
4 consistent with this chapter, pursuant to the administrative appeals or  
5 exception procedure authorized by RCW 74.46.780.

6 (3) For July 1, 1995, and all following rates, the maximum  
7 prospective component payment rates for the nursing services, food,  
8 administrative, operational, and property cost centers, and the return  
9 on investment (ROI) component rate for each nursing facility shall be  
10 established based upon a minimum licensed bed facility occupancy level  
11 of ninety percent, except for rate adjustments as provided for in RCW  
12 74.46.460(6), and except for entirely new facilities that commenced  
13 operation between January 1, 1994, and June 30, 1994, and were impacted  
14 by the ninety percent minimum occupancy factor, shall have their  
15 nursing services, food, administrative, and operational component rates  
16 revised based upon a minimum licensed bed facility occupancy level of  
17 eighty-five percent, effective May 1, 1997.

18 (4) The minimum ninety percent facility occupancy shall be used to  
19 calculate individual rates, to calculate the median cost limits (MCLs)  
20 for the metropolitan statistical area (MSA) and nonmetropolitan  
21 statistical area (non-MSA) peer groups, and to array facilities by  
22 costs in calculating the variable return portion of the return on  
23 investment rate component (ROI).

24 (5) All contractors shall be required to adjust and maintain wages  
25 for all employees to a minimum hourly wage of four dollars and seventy-  
26 six cents per hour beginning January 1, 1988, and five dollars and  
27 fifteen cents per hour beginning January 1, 1989.

28 **Sec. 4.** RCW 74.46.465 and 1987 c 476 s 8 are each amended to read  
29 as follows:

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

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

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

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

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

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

9 (2) If a contractor experiences an increase in property taxes  
10 relating to construction qualifying under RCW 74.46.360(2), the  
11 department shall adjust rates to cover state and county increases in  
12 real estate taxes, effective the first day on which the increased tax  
13 payment is due, related to construction qualifying for reimbursement  
14 under RCW 74.46.360(2).

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

17 **Sec. 5.** RCW 74.46.510 and 1995 1st sp.s. c 18 s 108 are each  
18 amended to read as follows:

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

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

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

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

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

7       **Sec. 6.** RCW 74.46.530 and 1995 1st sp.s. c 18 s 109 are each  
8 amended to read as follows:

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

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

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



1 is unable to provide necessary information to determine net invested  
2 funds, the secretary shall have the authority to determine an amount  
3 for net invested funds based on an appraisal conducted according to RCW  
4 74.46.360(1).

5 (c) In determining the variable return allowance:

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

12 (ii) The department shall then compute the variable return  
13 allowance by multiplying the appropriate percentage amounts, which  
14 shall not be less than one percent and not greater than four percent,  
15 by the sum of the facility's nursing services, food, administrative,  
16 and operational rate components. The percentage amounts will be based  
17 on groupings of facilities according to the rankings prescribed in (i)  
18 of this subsection (1)(c). The percentages calculated and assigned  
19 will remain the same for the variable return allowance paid in all July  
20 1, 1996, and July 1, 1997, rates as well. Those groups of facilities  
21 with lower per diem costs shall receive higher percentage amounts than  
22 those with higher per diem costs.

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

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

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

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

6 (ii) The sum of the financing allowance computed under subsection  
7 (1)(e)(i) of this section and the variable allowance shall be compared  
8 to the annualized lease payment, plus any interest and depreciation  
9 associated with contractor-owned assets, for the period covered by the  
10 prospective rates, divided by the contractor's total resident days,  
11 minus the property cost center rate determined according to RCW  
12 74.46.510. The lesser of the two amounts shall be called the alternate  
13 return on investment rate.

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

19 (f) In the case of a facility which was leased by the contractor as  
20 of January 1, 1980, in an arm's-length agreement, if the lease is  
21 renewed or extended pursuant to a provision of the lease, the treatment  
22 provided in subsection (1)(e) of this section shall be applied except  
23 that in the case of renewals or extensions made subsequent to April 1,  
24 1985, reimbursement for the annualized lease payment shall be no  
25 greater than the reimbursement for the annualized lease payment for the  
26 last year prior to the renewal or extension of the lease.

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

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

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

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

5 (1) A prospective per resident day rate enhancement shall be  
6 provided annually, using state general funds, for nursing homes that  
7 meet the following conditions:

8 (a) The nursing home entered into an arm's-length agreement for a  
9 facility lease prior to January 1, 1980;

10 (b) The lessee purchased the leased nursing home after January 1,  
11 1980; and

12 (c) The lessor defaulted on its loan or mortgage for the assets of  
13 the home after January 1, 1991, and prior to January 1, 1992.

14 (2) The rate enhancement provided under this section is effective  
15 on July 1, 1997, and shall be calculated by multiplying the nursing  
16 home's July 1, 1996, total per resident day rate by four and eight-  
17 tenths percent. The enhancement rate established on July 1, 1997,  
18 shall continue to be the rate enhancement amount paid for each  
19 subsequent July 1 rate period.

20 (3) Any rate enhancement granted pursuant to this section shall not  
21 be subject to the settlement, audit, or rate-setting requirements  
22 contained in this chapter.

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