

CERTIFICATION OF ENROLLMENT
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1484

56th Legislature
1999 Regular Session

Passed by the House April 23, 1999
Yeas 96 Nays 0

Speaker of the House of Representatives

Speaker of the House of Representatives

Passed by the Senate April 21, 1999
Yeas 45 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

We, Dean R. Foster and Timothy A. Martin, Co-Chief Clerks of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1484** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

Chief Clerk

FILED

Secretary of State
State of Washington

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1484

AS AMENDED BY THE SENATE

Passed Legislature - 1999 Regular Session

State of Washington 56th Legislature 1999 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Parlette, Cody, Alexander, Conway and Edwards)

Read first time 03/08/1999.

1 AN ACT Relating to the medicaid related payment of property costs
2 in licensed nursing facilities; amending RCW 74.46.020, 74.46.360,
3 74.46.421, 74.46.431, 74.46.506, 74.46.511, 74.46.515, 74.46.521,
4 74.46.350, and 74.46.370; amending 1998 c 322 s 29 (uncodified); adding
5 new sections to chapter 74.46 RCW; repealing RCW 74.46.350 and
6 74.46.370; repealing 1998 c 322 s 29 (uncodified); providing an
7 effective date; and declaring an emergency.

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

9 **Sec. 1.** RCW 74.46.020 and 1998 c 322 s 2 are each amended to read
10 as follows:

11 Unless the context clearly requires otherwise, the definitions in
12 this section apply throughout this chapter.

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

17 (2) "Appraisal" means the process of estimating the fair market
18 value or reconstructing the historical cost of an asset acquired in a
19 past period as performed by a professionally designated real estate

1 appraiser with no pecuniary interest in the property to be appraised.
2 It includes a systematic, analytic determination and the recording and
3 analyzing of property facts, rights, investments, and values based on
4 a personal inspection and inventory of the property.

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

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

18 (5) "Audit" or "department audit" means an examination of the
19 records of a nursing facility participating in the medicaid payment
20 system, including but not limited to: The contractor's financial and
21 statistical records, cost reports and all supporting documentation and
22 schedules, receivables, and resident trust funds, to be performed as
23 deemed necessary by the department and according to department rule.

24 (6) "Bad debts" means amounts considered to be uncollectible from
25 accounts and notes receivable.

26 (7) "Beneficial owner" means:

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

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

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

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

1 (c) Any person who, subject to (b) of this subsection, has the
2 right to acquire beneficial ownership of such ownership interest within
3 sixty days, including but not limited to any right to acquire:

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

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

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

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

10 except that, any person who acquires an ownership interest or power
11 specified in (c)(i), (ii), or (iii) of this subsection with the purpose
12 or effect of changing or influencing the control of the contractor, or
13 in connection with or as a participant in any transaction having such
14 purpose or effect, immediately upon such acquisition shall be deemed to
15 be the beneficial owner of the ownership interest which may be acquired
16 through the exercise or conversion of such ownership interest or power;

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

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

29 (ii) The pledgee agreement, prior to default, does not grant to the
30 pledgee:

31 (A) The power to vote or to direct the vote of the pledged
32 ownership interest; or

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

37 (8) "Capital portion of the rate" means the sum of the property and
38 financing allowance rate allocations, as established in part E of this
39 chapter.

1 (9) "Capitalization" means the recording of an expenditure as an
2 asset.

3 ~~((+9))~~ (10) "Case mix" means a measure of the intensity of care
4 and services needed by the residents of a nursing facility or a group
5 of residents in the facility.

6 ~~((+10))~~ (11) "Case mix index" means a number representing the
7 average case mix of a nursing facility.

8 ~~((+11))~~ (12) "Case mix weight" means a numeric score that
9 identifies the relative resources used by a particular group of a
10 nursing facility's residents.

11 ~~((+12))~~ (13) "Contractor" means a person or entity licensed under
12 chapter 18.51 RCW to operate a medicare and medicaid certified nursing
13 facility, responsible for operational decisions, and contracting with
14 the department to provide services to medicaid recipients residing in
15 the facility.

16 ~~((+13))~~ (14) "Default case" means no initial assessment has been
17 completed for a resident and transmitted to the department by the
18 cut-off date, or an assessment is otherwise past due for the resident,
19 under state and federal requirements.

20 ~~((+14))~~ (15) "Department" means the department of social and
21 health services (DSHS) and its employees.

22 ~~((+15))~~ (16) "Depreciation" means the systematic distribution of
23 the cost or other basis of tangible assets, less salvage, over the
24 estimated useful life of the assets.

25 ~~((+16))~~ (17) "Direct care" means nursing care and related care
26 provided to nursing facility residents. Therapy care shall not be
27 considered part of direct care.

28 ~~((+17))~~ (18) "Direct care supplies" means medical, pharmaceutical,
29 and other supplies required for the direct care of a nursing facility's
30 residents.

31 ~~((+18))~~ (19) "Entity" means an individual, partnership,
32 corporation, limited liability company, or any other association of
33 individuals capable of entering enforceable contracts.

34 ~~((+19))~~ (20) "Equity" means the net book value of all tangible and
35 intangible assets less the recorded value of all liabilities, as
36 recognized and measured in conformity with generally accepted
37 accounting principles.

38 ~~((+20))~~ (21) "Facility" or "nursing facility" means a nursing home
39 licensed in accordance with chapter 18.51 RCW, excepting nursing homes

1 certified as institutions for mental diseases, or that portion of a
2 multiservice facility licensed as a nursing home, or that portion of a
3 hospital licensed in accordance with chapter 70.41 RCW which operates
4 as a nursing home.

5 ~~((21))~~ (22) "Fair market value" means the replacement cost of an
6 asset less observed physical depreciation on the date for which the
7 market value is being determined.

8 ~~((22))~~ (23) "Financial statements" means statements prepared and
9 presented in conformity with generally accepted accounting principles
10 including, but not limited to, balance sheet, statement of operations,
11 statement of changes in financial position, and related notes.

12 ~~((23))~~ (24) "Generally accepted accounting principles" means
13 accounting principles approved by the financial accounting standards
14 board (FASB).

15 ~~((24))~~ (25) "Goodwill" means the excess of the price paid for a
16 nursing facility business over the fair market value of all net
17 identifiable tangible and intangible assets acquired, as measured in
18 accordance with generally accepted accounting principles.

19 ~~((25))~~ (26) "Grouper" means a computer software product that
20 groups individual nursing facility residents into case mix
21 classification groups based on specific resident assessment data and
22 computer logic.

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

26 ~~((27))~~ (28) "Imprest fund" means a fund which is regularly
27 replenished in exactly the amount expended from it.

28 ~~((28))~~ (29) "Joint facility costs" means any costs which
29 represent resources which benefit more than one facility, or one
30 facility and any other entity.

31 ~~((29))~~ (30) "Lease agreement" means a contract between two
32 parties for the possession and use of real or personal property or
33 assets for a specified period of time in exchange for specified
34 periodic payments. Elimination (due to any cause other than death or
35 divorce) or addition of any party to the contract, expiration, or
36 modification of any lease term in effect on January 1, 1980, or
37 termination of the lease by either party by any means shall constitute
38 a termination of the lease agreement. An extension or renewal of a
39 lease agreement, whether or not pursuant to a renewal provision in the

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

6 ~~((+30+))~~ (31) "Medical care program" or "medicaid program" means
7 medical assistance, including nursing care, provided under RCW
8 74.09.500 or authorized state medical care services.

9 ~~((+31+))~~ (32) "Medical care recipient," "medicaid recipient," or
10 "recipient" means an individual determined eligible by the department
11 for the services provided under chapter 74.09 RCW.

12 ~~((+32+))~~ (33) "Minimum data set" means the overall data component
13 of the resident assessment instrument, indicating the strengths, needs,
14 and preferences of an individual nursing facility resident.

15 ~~((+33+))~~ (34) "Net book value" means the historical cost of an
16 asset less accumulated depreciation.

17 ~~((+34+))~~ (35) "Net invested funds" means the net book value of
18 tangible fixed assets employed by a contractor to provide services
19 under the medical care program, including land, buildings, and
20 equipment as recognized and measured in conformity with generally
21 accepted accounting principles ~~(, plus an allowance for working capital
22 which shall be five percent of the product of the per patient day rate
23 multiplied by the prior calendar year reported total patient days of
24 each contractor)~~.

25 ~~((+35+))~~ (36) "Noncapital portion of the rate" means the sum of the
26 direct care, therapy care, operations, support services, and variable
27 return rate allocations, as established in part E of this chapter.

28 (37) "Operating lease" means a lease under which rental or lease
29 expenses are included in current expenses in accordance with generally
30 accepted accounting principles.

31 ~~((+36+))~~ (38) "Owner" means a sole proprietor, general or limited
32 partners, members of a limited liability company, and beneficial
33 interest holders of five percent or more of a corporation's outstanding
34 stock.

35 ~~((+37+))~~ (39) "Ownership interest" means all interests beneficially
36 owned by a person, calculated in the aggregate, regardless of the form
37 which such beneficial ownership takes.

38 ~~((+38+))~~ (40) "Patient day" or "resident day" means a calendar day
39 of care provided to a nursing facility resident, regardless of payment

1 source, which will include the day of admission and exclude the day of
2 discharge; except that, when admission and discharge occur on the same
3 day, one day of care shall be deemed to exist. A "medicaid day" or
4 "recipient day" means a calendar day of care provided to a medicaid
5 recipient determined eligible by the department for services provided
6 under chapter 74.09 RCW, subject to the same conditions regarding
7 admission and discharge applicable to a patient day or resident day of
8 care.

9 ~~((+39+))~~ (41) "Professionally designated real estate appraiser"
10 means an individual who is regularly engaged in the business of
11 providing real estate valuation services for a fee, and who is deemed
12 qualified by a nationally recognized real estate appraisal educational
13 organization on the basis of extensive practical appraisal experience,
14 including the writing of real estate valuation reports as well as the
15 passing of written examinations on valuation practice and theory, and
16 who by virtue of membership in such organization is required to
17 subscribe and adhere to certain standards of professional practice as
18 such organization prescribes.

19 ~~((+40+))~~ (42) "Qualified therapist" means:

20 (a) A mental health professional as defined by chapter 71.05 RCW;

21 (b) A mental retardation professional who is a therapist approved
22 by the department who has had specialized training or one year's
23 experience in treating or working with the mentally retarded or
24 developmentally disabled;

25 (c) A speech pathologist who is eligible for a certificate of
26 clinical competence in speech pathology or who has the equivalent
27 education and clinical experience;

28 (d) A physical therapist as defined by chapter 18.74 RCW;

29 (e) An occupational therapist who is a graduate of a program in
30 occupational therapy, or who has the equivalent of such education or
31 training; and

32 (f) A respiratory care practitioner certified under chapter 18.89
33 RCW.

34 ~~((+41+))~~ (43) "Rate" or "rate allocation" means the medicaid per-
35 patient-day payment amount for medicaid patients calculated in
36 accordance with the allocation methodology set forth in part E of this
37 chapter.

1 (~~(42)~~) (44) "Real property," whether leased or owned by the
2 contractor, means the building, allowable land, land improvements, and
3 building improvements associated with a nursing facility.

4 (~~(43)~~) (45) "Rebased rate" or "cost-rebased rate" means a
5 facility-specific component rate assigned to a nursing facility for a
6 particular rate period established on desk-reviewed, adjusted costs
7 reported for that facility covering at least six months of a prior
8 calendar year designated as a year to be used for cost-rebasing payment
9 rate allocations under the provisions of this chapter.

10 (~~(44)~~) (46) "Records" means those data supporting all financial
11 statements and cost reports including, but not limited to, all general
12 and subsidiary ledgers, books of original entry, and transaction
13 documentation, however such data are maintained.

14 (~~(45)~~) (47) "Related organization" means an entity which is under
15 common ownership and/or control with, or has control of, or is
16 controlled by, the contractor.

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

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

24 (~~(46)~~) (48) "Related care" means only those services that are
25 directly related to providing direct care to nursing facility
26 residents. These services include, but are not limited to, nursing
27 direction and supervision, medical direction, medical records, pharmacy
28 services, activities, and social services.

29 (~~(47)~~) (49) "Resident assessment instrument," including federally
30 approved modifications for use in this state, means a federally
31 mandated, comprehensive nursing facility resident care planning and
32 assessment tool, consisting of the minimum data set and resident
33 assessment protocols.

34 (~~(48)~~) (50) "Resident assessment protocols" means those
35 components of the resident assessment instrument that use the minimum
36 data set to trigger or flag a resident's potential problems and risk
37 areas.

1 (~~(49)~~) (51) "Resource utilization groups" means a case mix
2 classification system that identifies relative resources needed to care
3 for an individual nursing facility resident.

4 (~~(50)~~) (52) "Restricted fund" means those funds the principal
5 and/or income of which is limited by agreement with or direction of the
6 donor to a specific purpose.

7 (~~(51)~~) (53) "Secretary" means the secretary of the department of
8 social and health services.

9 (~~(52)~~) (54) "Support services" means food, food preparation,
10 dietary, housekeeping, and laundry services provided to nursing
11 facility residents.

12 (~~(53)~~) (55) "Therapy care" means those services required by a
13 nursing facility resident's comprehensive assessment and plan of care,
14 that are provided by qualified therapists, or support personnel under
15 their supervision, including related costs as designated by the
16 department.

17 (~~(54)~~) (56) "Title XIX" or "medicaid" means the 1965 amendments
18 to the social security act, P.L. 89-07, as amended and the medicaid
19 program administered by the department.

20 **Sec. 2.** RCW 74.46.360 and 1997 c 277 s 1 are each amended to read
21 as follows:

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

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

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

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

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

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

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

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

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

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

38 (6)(a) For facilities, other than those described under subsection
39 (2) of this section, operating prior to July 1, 1997, where land or

1 depreciable assets are acquired that were used in the medical care
2 program subsequent to January 1, 1980, the cost basis or depreciation
3 base of the assets will not exceed the net book value which did exist
4 or would have existed had the assets continued in use under the
5 previous contract with the department; except that depreciation shall
6 not be assumed to accumulate during periods when the assets were not in
7 use in or as a facility.

8 (b) The provisions of (a) of this subsection shall not apply to the
9 most recent arm's-length acquisition if it occurs at least ten years
10 after the ownership of the assets has been previously transferred in an
11 arm's-length transaction nor to the first arm's-length acquisition that
12 occurs after January 1, 1980, for facilities participating in the
13 medical care program prior to January 1, 1980. The new cost basis or
14 depreciation base for such acquisitions shall not exceed the fair
15 market value of the assets as determined by the department of general
16 administration through an appraisal procedure. A determination by the
17 department of general administration of fair market value shall be
18 final unless the procedure used to make such determination is shown to
19 be arbitrary and capricious. For all partial or whole rate periods
20 after July 17, 1984, this subsection is inoperative for any transfer of
21 ownership of any asset, depreciable or nondepreciable, occurring on or
22 after July 18, 1984, leaving (a) of this subsection to apply alone to
23 such transfers: PROVIDED, HOWEVER, That this subsection shall apply to
24 transfers of ownership of assets occurring prior to January 1, 1985, if
25 the costs of such assets have never been reimbursed under medicaid cost
26 reimbursement on an owner-operated basis or as a related-party lease:
27 PROVIDED FURTHER, That for any contractor that can document in writing
28 an enforceable agreement for the purchase of a nursing home dated prior
29 to July 18, 1984, and submitted to the department prior to January 1,
30 1988, the cost basis of allowable land and the depreciation base of the
31 nursing home, for rates established after July 18, 1984, shall not
32 exceed the fair market value of the assets at the date of purchase as
33 determined by the department of general administration through an
34 appraisal procedure. For medicaid cost reimbursement purposes, an
35 agreement to purchase a nursing home dated prior to July 18, 1984, is
36 enforceable, even though such agreement contains no legal description
37 of the real property involved, notwithstanding the statute of frauds or
38 any other provision of law.

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

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

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

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

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

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

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

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

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

34 **Sec. 3.** RCW 74.46.421 and 1998 c 322 s 18 are each amended to read
35 as follows:

36 (1) The purpose of part E of this chapter is to determine nursing
37 facility medicaid payment rates that, in the aggregate for all

1 participating nursing facilities, are in accordance with the biennial
2 appropriations act.

3 (2)(a) The department shall use the nursing facility medicaid
4 payment rate methodologies described in this chapter to determine
5 initial component rate allocations for each medicaid nursing facility.

6 (b) The initial component rate allocations shall be subject to
7 adjustment as provided in this section in order to assure that the
8 state-wide average payment rate to nursing facilities is less than or
9 equal to the state-wide average payment rate specified in the biennial
10 appropriations act.

11 (3) Nothing in this chapter shall be construed as creating a legal
12 right or entitlement to any payment that (a) has not been adjusted
13 under this section or (b) would cause the state-wide average payment
14 rate to exceed the state-wide average payment rate specified in the
15 biennial appropriations act.

16 (4)(a) The state-wide average payment rate for the capital portion
17 of the rate for any state fiscal year under the nursing facility
18 medicaid payment system, weighted by patient days, shall not exceed the
19 annual state-wide weighted average nursing facility payment rate for
20 the capital portion of the rate identified for that fiscal year in the
21 biennial appropriations act.

22 (b) If the department determines that the weighted average nursing
23 facility payment rate for the capital portion of the rate calculated in
24 accordance with this chapter is likely to exceed the weighted average
25 nursing facility payment rate for the capital portion of the rate
26 identified in the biennial appropriations act, then the department
27 shall adjust all nursing facility property and financing allowance
28 payment rates proportional to the amount by which the weighted average
29 rate allocations would otherwise exceed the budgeted capital portion of
30 the rate amount. Any such adjustments shall only be made
31 prospectively, not retrospectively, and shall be applied
32 proportionately to each component rate allocation for each facility.

33 (5)(a) The state-wide average payment rate for the noncapital
34 portion of the rate for any state fiscal year under the nursing
35 facility payment system, weighted by patient days, shall not exceed the
36 annual state-wide weighted average nursing facility payment rate for
37 the noncapital portion of the rate identified for that fiscal year in
38 the biennial appropriations act.

1 (b) If the department determines that the weighted average nursing
2 facility payment rate for the noncapital portion of the rate calculated
3 in accordance with this chapter is likely to exceed the weighted
4 average nursing facility payment rate for the noncapital portion of the
5 rate identified in the biennial appropriations act, then the department
6 shall adjust all nursing facility direct care, therapy care, support
7 services, operations, and variable return payment rates proportional to
8 the amount by which the weighted average rate allocations would
9 otherwise exceed the budgeted noncapital portion of the rate amount.
10 Any such adjustments shall only be made prospectively, not
11 retrospectively, and shall be applied proportionately to each direct
12 care, therapy care, support services, operations, and variable return
13 rate allocation for each facility.

14 **Sec. 4.** RCW 74.46.431 and 1998 c 322 s 19 are each amended to read
15 as follows:

16 (1) Effective (~~(October 1, 1998)~~) July 1, 1999, nursing facility
17 medicaid payment rate allocations shall be facility-specific and shall
18 have (~~(six)~~) seven components: Direct care, therapy care, support
19 services, operations, property, financing allowance, and variable
20 return (~~(on investment)~~). The department shall establish and adjust
21 each of these components, as provided in this section and elsewhere in
22 this chapter, for each medicaid nursing facility in this state.

23 (2) All component rate allocations shall be based upon a minimum
24 facility occupancy of eighty-five percent of licensed beds, regardless
25 of how many beds are set up or in use.

26 (3) Information and data sources used in determining medicaid
27 payment rate allocations, including formulas, procedures, cost report
28 periods, resident assessment instrument formats, resident assessment
29 methodologies, and resident classification and case mix weighting
30 methodologies, may be substituted or altered from time to time as
31 determined by the department.

32 (4)(a) Direct care component rate allocations shall be established
33 using adjusted cost report data covering at least six months. Adjusted
34 cost report data from 1996 will be used for October 1, 1998, through
35 June 30, 2001, direct care component rate allocations; adjusted cost
36 report data from 1999 will be used for July 1, 2001, through June 30,
37 2004, direct care component rate allocations.

1 (b) Direct care component rate allocations based on 1996 cost
2 report data shall be adjusted annually for economic trends and
3 conditions by a factor or factors defined in the biennial
4 appropriations act. A different economic trends and conditions
5 adjustment factor or factors may be defined in the biennial
6 appropriations act for facilities whose direct care component rate is
7 set equal to their adjusted June 30, 1998, rate, as provided in RCW
8 74.46.506(5)(k).

9 (c) Direct care component rate allocations based on 1999 cost
10 report data shall be adjusted annually for economic trends and
11 conditions by a factor or factors defined in the biennial
12 appropriations act. A different economic trends and conditions
13 adjustment factor or factors may be defined in the biennial
14 appropriations act for facilities whose direct care component rate is
15 set equal to their adjusted June 30, 1998, rate, as provided in RCW
16 74.46.506(5)(k).

17 (5)(a) Therapy care component rate allocations shall be established
18 using adjusted cost report data covering at least six months. Adjusted
19 cost report data from 1996 will be used for October 1, 1998, through
20 June 30, 2001, therapy care component rate allocations; adjusted cost
21 report data from 1999 will be used for July 1, 2001, through June 30,
22 2004, therapy care component rate allocations.

23 (b) Therapy care component rate allocations shall be adjusted
24 annually for economic trends and conditions by a factor or factors
25 defined in the biennial appropriations act.

26 (6)(a) Support services component rate allocations shall be
27 established using adjusted cost report data covering at least six
28 months. Adjusted cost report data from 1996 shall be used for October
29 1, 1998, through June 30, 2001, support services component rate
30 allocations; adjusted cost report data from 1999 shall be used for July
31 1, 2001, through June 30, 2004, support services component rate
32 allocations.

33 (b) Support services component rate allocations shall be adjusted
34 annually for economic trends and conditions by a factor or factors
35 defined in the biennial appropriations act.

36 (7)(a) Operations component rate allocations shall be established
37 using adjusted cost report data covering at least six months. Adjusted
38 cost report data from 1996 shall be used for October 1, 1998, through
39 June 30, 2001, operations component rate allocations; adjusted cost

1 report data from 1999 shall be used for July 1, 2001, through June 30,
2 2004, operations component rate allocations.

3 (b) Operations component rate allocations shall be adjusted
4 annually for economic trends and conditions by a factor or factors
5 defined in the biennial appropriations act.

6 (8) For July 1, 1998, through September 30, 1998, a facility's
7 property and return on investment component rates shall be the
8 facility's June 30, 1998, property and return on investment component
9 rates, without increase. For October 1, 1998, through June 30, 1999,
10 a facility's property and return on investment component rates shall be
11 rebased utilizing 1997 adjusted cost report data covering at least six
12 months of data.

13 (9) Total payment rates under the nursing facility medicaid payment
14 system shall not exceed facility rates charged to the general public
15 for comparable services.

16 (10) Medicaid contractors shall pay to all facility staff a minimum
17 wage of the greater of five dollars and fifteen cents per hour or the
18 federal minimum wage.

19 (11) The department shall establish in rule procedures, principles,
20 and conditions for determining component rate allocations for
21 facilities in circumstances not directly addressed by this chapter,
22 including but not limited to: The need to prorate inflation for
23 partial-period cost report data, newly constructed facilities, existing
24 facilities entering the medicaid program for the first time or after a
25 period of absence from the program, existing facilities with expanded
26 new bed capacity, existing medicaid facilities following a change of
27 ownership of the nursing facility business, facilities banking beds or
28 converting beds back into service, facilities having less than six
29 months of either resident assessment, cost report data, or both, under
30 the current contractor prior to rate setting, and other circumstances.

31 (12) The department shall establish in rule procedures, principles,
32 and conditions, including necessary threshold costs, for adjusting
33 rates to reflect capital improvements or new requirements imposed by
34 the department or the federal government. Any such rate adjustments
35 are subject to the provisions of RCW 74.46.421.

36 **Sec. 5.** RCW 74.46.506 and 1998 c 322 s 25 are each amended to read
37 as follows:

1 (1) The direct care component rate allocation corresponds to the
2 provision of nursing care for one resident of a nursing facility for
3 one day, including direct care supplies. Therapy services and
4 supplies, which correspond to the therapy care component rate, shall be
5 excluded. The direct care component rate includes elements of case mix
6 determined consistent with the principles of this section and other
7 applicable provisions of this chapter.

8 (2) Beginning October 1, 1998, the department shall determine and
9 update quarterly for each nursing facility serving medicaid residents
10 a facility-specific per-resident day direct care component rate
11 allocation, to be effective on the first day of each calendar quarter.
12 In determining direct care component rates the department shall
13 utilize, as specified in this section, minimum data set resident
14 assessment data for each resident of the facility, as transmitted to,
15 and if necessary corrected by, the department in the resident
16 assessment instrument format approved by federal authorities for use in
17 this state.

18 (3) The department may question the accuracy of assessment data for
19 any resident and utilize corrected or substitute information, however
20 derived, in determining direct care component rates. The department is
21 authorized to impose civil fines and to take adverse rate actions
22 against a contractor, as specified by the department in rule, in order
23 to obtain compliance with resident assessment and data transmission
24 requirements and to ensure accuracy.

25 (4) Cost report data used in setting direct care component rate
26 allocations shall be 1996 and 1999, for rate periods as specified in
27 RCW 74.46.431(4)(a).

28 (5) Beginning October 1, 1998, the department shall rebase each
29 nursing facility's direct care component rate allocation as described
30 in RCW 74.46.431, adjust its direct care component rate allocation for
31 economic trends and conditions as described in RCW 74.46.431, and
32 update its medicaid average case mix index, consistent with the
33 following:

34 (a) Reduce total direct care costs reported by each nursing
35 facility for the applicable cost report period specified in RCW
36 74.46.431(4)(a) to reflect any department adjustments, and to eliminate
37 reported resident therapy costs and adjustments, in order to derive the
38 facility's total allowable direct care cost;

1 (b) Divide each facility's total allowable direct care cost by its
2 adjusted resident days for the same report period, increased if
3 necessary to a minimum occupancy of eighty-five percent; that is, the
4 greater of actual or imputed occupancy at eighty-five percent of
5 licensed beds, to derive the facility's allowable direct care cost per
6 resident day;

7 (c) Adjust the facility's per resident day direct care cost by the
8 applicable factor specified in RCW 74.46.431(4) (b) and (c) to derive
9 its adjusted allowable direct care cost per resident day;

10 (d) Divide each facility's adjusted allowable direct care cost per
11 resident day by the facility average case mix index for the applicable
12 quarters specified by RCW 74.46.501(7)(b) to derive the facility's
13 allowable direct care cost per case mix unit;

14 (e) Divide nursing facilities into two peer groups: Those located
15 in metropolitan statistical areas as determined and defined by the
16 United States office of management and budget or other appropriate
17 agency or office of the federal government, and those not located in a
18 metropolitan statistical area;

19 (f) Array separately the allowable direct care cost per case mix
20 unit for all metropolitan statistical area and for all nonmetropolitan
21 statistical area facilities, and determine the median allowable direct
22 care cost per case mix unit for each peer group;

23 (g) Except as provided in (k) of this subsection, from October 1,
24 1998, through June 30, 2000, determine each facility's quarterly direct
25 care component rate as follows:

26 (i) Any facility whose allowable cost per case mix unit is less
27 than eighty-five percent of the facility's peer group median
28 established under (f) of this subsection shall be assigned a cost per
29 case mix unit equal to eighty-five percent of the facility's peer group
30 median, and shall have a direct care component rate allocation equal to
31 the facility's assigned cost per case mix unit multiplied by that
32 facility's medicaid average case mix index from the applicable quarter
33 specified in RCW 74.46.501(7)(c);

34 (ii) Any facility whose allowable cost per case mix unit is greater
35 than one hundred fifteen percent of the peer group median established
36 under (f) of this subsection shall be assigned a cost per case mix unit
37 equal to one hundred fifteen percent of the peer group median, and
38 shall have a direct care component rate allocation equal to the
39 facility's assigned cost per case mix unit multiplied by that

1 facility's medicaid average case mix index from the applicable quarter
2 specified in RCW 74.46.501(7)(c);

3 (iii) Any facility whose allowable cost per case mix unit is
4 between eighty-five and one hundred fifteen percent of the peer group
5 median established under (f) of this subsection shall have a direct
6 care component rate allocation equal to the facility's allowable cost
7 per case mix unit multiplied by that facility's medicaid average case
8 mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

9 (h) Except as provided in (k) of this subsection, from July 1,
10 2000, through June 30, 2002, determine each facility's quarterly direct
11 care component rate as follows:

12 (i) Any facility whose allowable cost per case mix unit is less
13 than ninety percent of the facility's peer group median established
14 under (f) of this subsection shall be assigned a cost per case mix unit
15 equal to ninety percent of the facility's peer group median, and shall
16 have a direct care component rate allocation equal to the facility's
17 assigned cost per case mix unit multiplied by that facility's medicaid
18 average case mix index from the applicable quarter specified in RCW
19 74.46.501(7)(c);

20 (ii) Any facility whose allowable cost per case mix unit is greater
21 than one hundred ten percent of the peer group median established under
22 (f) of this subsection shall be assigned a cost per case mix unit equal
23 to one hundred ten percent of the peer group median, and shall have a
24 direct care component rate allocation equal to the facility's assigned
25 cost per case mix unit multiplied by that facility's medicaid average
26 case mix index from the applicable quarter specified in RCW
27 74.46.501(7)(c);

28 (iii) Any facility whose allowable cost per case mix unit is
29 between ninety and one hundred ten percent of the peer group median
30 established under (f) of this subsection shall have a direct care
31 component rate allocation equal to the facility's allowable cost per
32 case mix unit multiplied by that facility's medicaid average case mix
33 index from the applicable quarter specified in RCW 74.46.501(7)(c);

34 (i) From July 1, 2002, through June 30, 2004, determine each
35 facility's quarterly direct care component rate as follows:

36 (i) Any facility whose allowable cost per case mix unit is less
37 than ninety-five percent of the facility's peer group median
38 established under (f) of this subsection shall be assigned a cost per
39 case mix unit equal to ninety-five percent of the facility's peer group

1 median, and shall have a direct care component rate allocation equal to
2 the facility's assigned cost per case mix unit multiplied by that
3 facility's medicaid average case mix index from the applicable quarter
4 specified in RCW 74.46.501(7)(c);

5 (ii) Any facility whose allowable cost per case mix unit is greater
6 than one hundred five percent of the peer group median established
7 under (f) of this subsection shall be assigned a cost per case mix unit
8 equal to one hundred five percent of the peer group median, and shall
9 have a direct care component rate allocation equal to the facility's
10 assigned cost per case mix unit multiplied by that facility's medicaid
11 average case mix index from the applicable quarter specified in RCW
12 74.46.501(7)(c);

13 (iii) Any facility whose allowable cost per case mix unit is
14 between ninety-five and one hundred five percent of the peer group
15 median established under (f) of this subsection shall have a direct
16 care component rate allocation equal to the facility's allowable cost
17 per case mix unit multiplied by that facility's medicaid average case
18 mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

19 (j) Beginning July 1, 2004, determine each facility's quarterly
20 direct care component rate by multiplying the facility's peer group
21 median allowable direct care cost per case mix unit by that facility's
22 medicaid average case mix index from the applicable quarter as
23 specified in RCW 74.46.501(7)(c).

24 (k)(i) Between October 1, 1998, and June 30, 2000, the department
25 shall compare each facility's direct care component rate allocation
26 calculated under (g) of this subsection with the facility's nursing
27 services component rate in effect on June 30, 1998, less therapy costs,
28 plus any exceptional care offsets as reported on the cost report,
29 adjusted for economic trends and conditions as provided in RCW
30 74.46.431. A facility shall receive the higher of the two rates;

31 (ii) Between July 1, 2000, and June 30, 2002, the department shall
32 compare each facility's direct care component rate allocation
33 calculated under (h) of this subsection with the facility's direct care
34 component rate in effect on June 30, 2000. A facility shall receive
35 the higher of the two rates.

36 (6) The direct care component rate allocations calculated in
37 accordance with this section shall be adjusted to the extent necessary
38 to comply with RCW 74.46.421. (~~If the department determines that the~~
39 ~~weighted average rate allocations for all rate components for all~~

1 facilities is likely to exceed the weighted average total rate
2 specified in the state biennial appropriations act, the department
3 shall adjust the rate allocations calculated in this section
4 proportional to the amount by which the total weighted average rate
5 allocations would otherwise exceed the budgeted level. Such
6 adjustments shall only be made prospectively, not retrospectively.))

7 **Sec. 6.** RCW 74.46.511 and 1998 c 322 s 26 are each amended to read
8 as follows:

9 (1) The therapy care component rate allocation corresponds to the
10 provision of medicaid one-on-one therapy provided by a qualified
11 therapist as defined in this chapter, including therapy supplies and
12 therapy consultation, for one day for one medicaid resident of a
13 nursing facility. The therapy care component rate allocation for
14 October 1, 1998, through June 30, 2001, shall be based on adjusted
15 therapy costs and days from calendar year 1996. The therapy component
16 rate allocation for July 1, 2001, through June 30, 2004, shall be based
17 on adjusted therapy costs and days from calendar year 1999. The
18 therapy care component rate shall be adjusted for economic trends and
19 conditions as specified in RCW 74.46.431(5)(b), and shall be determined
20 in accordance with this section.

21 (2) In rebasing, as provided in RCW 74.46.431(5)(a), the department
22 shall take from the cost reports of facilities the following reported
23 information:

24 (a) Direct one-on-one therapy charges for all residents by payer
25 including charges for supplies;

26 (b) The total units or modules of therapy care for all residents by
27 type of therapy provided, for example, speech or physical. A unit or
28 module of therapy care is considered to be fifteen minutes of one-on-
29 one therapy provided by a qualified therapist or support personnel; and

30 (c) Therapy consulting expenses for all residents.

31 (3) The department shall determine for all residents the total cost
32 per unit of therapy for each type of therapy by dividing the total
33 adjusted one-on-one therapy expense for each type by the total units
34 provided for that therapy type.

35 (4) The department shall divide medicaid nursing facilities in this
36 state into two peer groups:

37 (a) Those facilities located within a metropolitan statistical
38 area; and

1 (b) Those not located in a metropolitan statistical area.

2 Metropolitan statistical areas and nonmetropolitan statistical
3 areas shall be as determined by the United States office of management
4 and budget or other applicable federal office. The department shall
5 array the facilities in each peer group from highest to lowest based on
6 their total cost per unit of therapy for each therapy type. The
7 department shall determine the median total cost per unit of therapy
8 for each therapy type and add ten percent of median total cost per unit
9 of therapy. The cost per unit of therapy for each therapy type at a
10 nursing facility shall be the lesser of its cost per unit of therapy
11 for each therapy type or the median total cost per unit plus ten
12 percent for each therapy type for its peer group.

13 (5) The department shall calculate each nursing facility's therapy
14 care component rate allocation as follows:

15 (a) To determine the allowable total therapy cost for each therapy
16 type, the allowable cost per unit of therapy for each type of therapy
17 shall be multiplied by the total therapy units for each type of
18 therapy;

19 (b) The medicaid allowable one-on-one therapy expense shall be
20 calculated taking the allowable total therapy cost for each therapy
21 type times the medicaid percent of total therapy charges for each
22 therapy type;

23 (c) The medicaid allowable one-on-one therapy expense for each
24 therapy type shall be divided by total adjusted medicaid days to arrive
25 at the medicaid one-on-one therapy cost per patient day for each
26 therapy type;

27 (d) The medicaid one-on-one therapy cost per patient day for each
28 therapy type shall be multiplied by total adjusted patient days for all
29 residents to calculate the total allowable one-on-one therapy expense.
30 The lesser of the total allowable therapy consultant expense for the
31 therapy type or a reasonable percentage of allowable therapy consultant
32 expense for each therapy type, as established in rule by the
33 department, shall be added to the total allowable one-on-one therapy
34 expense to determine the allowable therapy cost for each therapy type;

35 (e) The allowable therapy cost for each therapy type shall be added
36 together, the sum of which shall be the total allowable therapy expense
37 for the nursing facility;

38 (f) The total allowable therapy expense will be divided by the
39 greater of adjusted total patient days from the cost report on which

1 the therapy expenses were reported, or patient days at eighty-five
2 percent occupancy of licensed beds. The outcome shall be the nursing
3 facility's therapy care component rate allocation.

4 (6) The therapy care component rate allocations calculated in
5 accordance with this section shall be adjusted to the extent necessary
6 to comply with RCW 74.46.421. ~~((If the department determines that the
7 weighted average rate allocations for all rate components for all
8 facilities is likely to exceed the weighted average total rate
9 specified in the state biennial appropriations act, the department
10 shall adjust the rate allocations calculated in this section
11 proportional to the amount by which the total weighted average rate
12 allocations would otherwise exceed the budgeted level. Such
13 adjustments shall only be made prospectively, not retrospectively.))~~

14 **Sec. 7.** RCW 74.46.515 and 1998 c 322 s 27 are each amended to read
15 as follows:

16 (1) The support services component rate allocation corresponds to
17 the provision of food, food preparation, dietary, housekeeping, and
18 laundry services for one resident for one day.

19 (2) Beginning October 1, 1998, the department shall determine each
20 medicaid nursing facility's support services component rate allocation
21 using cost report data specified by RCW 74.46.431(6).

22 (3) To determine each facility's support services component rate
23 allocation, the department shall:

24 (a) Array facilities' adjusted support services costs per adjusted
25 resident day for each facility from facilities' cost reports from the
26 applicable report year, for facilities located within a metropolitan
27 statistical area, and for those not located in any metropolitan
28 statistical area and determine the median adjusted cost for each peer
29 group;

30 (b) Set each facility's support services component rate at the
31 lower of the facility's per resident day adjusted support services
32 costs from the applicable cost report period or the adjusted median per
33 resident day support services cost for that facility's peer group,
34 either metropolitan statistical area or nonmetropolitan statistical
35 area, plus ten percent; and

36 (c) Adjust each facility's support services component rate for
37 economic trends and conditions as provided in RCW 74.46.431(6).

1 (4) The support services component rate allocations calculated in
2 accordance with this section shall be adjusted to the extent necessary
3 to comply with RCW 74.46.421. (~~(If the department determines that the~~
4 ~~weighted average rate allocations for all rate components for all~~
5 ~~facilities is likely to exceed the weighted average total rate~~
6 ~~specified in the state biennial appropriations act, the department~~
7 ~~shall adjust the rate allocations calculated in this section~~
8 ~~proportional to the amount by which the total weighted average rate~~
9 ~~allocations would otherwise exceed the budgeted level. Such~~
10 ~~adjustments shall only be made prospectively, not retrospectively.))~~

11 **Sec. 8.** RCW 74.46.521 and 1998 c 322 s 28 are each amended to read
12 as follows:

13 (1) The operations component rate allocation corresponds to the
14 general operation of a nursing facility for one resident for one day,
15 including but not limited to management, administration, utilities,
16 office supplies, accounting and bookkeeping, minor building
17 maintenance, minor equipment repairs and replacements, and other
18 supplies and services, exclusive of direct care, therapy care, support
19 services, property, financing allowance, and variable return (~~(on~~
20 ~~investment))~~).

21 (2) Beginning October 1, 1998, the department shall determine each
22 medicaid nursing facility's operations component rate allocation using
23 cost report data specified by RCW 74.46.431(7)(a).

24 (3) To determine each facility's operations component rate the
25 department shall:

26 (a) Array facilities' adjusted general operations costs per
27 adjusted resident day for each facility from facilities' cost reports
28 from the applicable report year, for facilities located within a
29 metropolitan statistical area and for those not located in a
30 metropolitan statistical area and determine the median adjusted cost
31 for each peer group;

32 (b) Set each facility's operations component rate at the lower of
33 the facility's per resident day adjusted operations costs from the
34 applicable cost report period or the adjusted median per resident day
35 general operations cost for that facility's peer group, metropolitan
36 statistical area or nonmetropolitan statistical area; and

37 (c) Adjust each facility's operations component rate for economic
38 trends and conditions as provided in RCW 74.46.431(7)(b).

1 (4) The operations component rate allocations calculated in
2 accordance with this section shall be adjusted to the extent necessary
3 to comply with RCW 74.46.421. (~~(If the department determines that the
4 weighted average rate allocations for all rate components for all
5 facilities is likely to exceed the weighted average total rate
6 specified in the state biennial appropriations act, the department
7 shall adjust the rate allocations calculated in this section
8 proportional to the amount by which the total weighted average rate
9 allocations would otherwise exceed the budgeted level. Such
10 adjustments shall only be made prospectively, not retrospectively.)~~)

11 NEW SECTION. **Sec. 9.** (1) The department shall establish for each
12 medicaid nursing facility a variable return component rate allocation.
13 In determining the variable return allowance:

14 (a) The variable return array and percentage assigned at the
15 October 1, 1998, rate setting shall remain in effect until June 30,
16 2001.

17 (b) The department shall then compute the variable return allowance
18 by multiplying the appropriate percentage amounts, which shall not be
19 less than one percent and not greater than four percent, by the sum of
20 the facility's direct care, therapy care, support services, and
21 operations rate components. The percentage amounts will be based on
22 groupings of facilities according to the rankings prescribed in (a) of
23 this subsection, as applicable. Those groups of facilities with lower
24 per diem costs shall receive higher percentage amounts than those with
25 higher per diem costs.

26 (2) The variable return rate allocation calculated in accordance
27 with this section shall be adjusted to the extent necessary to comply
28 with RCW 74.46.421.

29 **Sec. 10.** 1998 c 322 s 29 (uncodified) is amended to read as
30 follows:

31 (1) The property component rate allocation for each facility shall
32 be determined by dividing the sum of the reported allowable prior
33 period actual depreciation, subject to RCW 74.46.310 through 74.46.380,
34 adjusted for any capitalized additions or replacements approved by the
35 department, and the retained savings from such cost center, by the
36 greater of a facility's total resident days for the facility in the
37 prior period or resident days as calculated on eighty-five percent

1 facility occupancy. If a capitalized addition or retirement of an
2 asset will result in a different licensed bed capacity during the
3 ensuing period, the prior period total resident days used in computing
4 the property component rate shall be adjusted to anticipated resident
5 day level.

6 (2) A nursing facility's property component rate allocation shall
7 be rebased annually, effective July 1st or October 1st as applicable,
8 in accordance with this section and this chapter.

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

13 (4) For the purpose of calculating a nursing facility's property
14 component rate, if a contractor elects to bank licensed beds or to
15 convert banked beds to active service, under chapter 70.38 RCW, the
16 department shall use the facility's anticipated resident occupancy
17 level subsequent to the decrease or increase in licensed bed capacity.
18 However, in no case shall the department use less than eighty-five
19 percent occupancy of the facility's licensed bed capacity after banking
20 or conversion.

21 (5) The property component rate allocations calculated in
22 accordance with this section shall be adjusted to the extent necessary
23 to comply with ~~((section 18 of this act))~~ RCW 74.46.421. ~~((If the
24 department determines that the weighted average rate allocations for
25 all rate components for all facilities is likely to exceed the weighted
26 average total rate specified in the state biennial appropriations act,
27 the department shall adjust the rate allocations calculated in this
28 section proportional to the amount by which the total weighted average
29 rate allocations would otherwise exceed the budgeted level. — Such
30 adjustments shall only be made prospectively, not retrospectively.))~~

31 NEW SECTION. Sec. 11. (1) Beginning July 1, 1999, the department
32 shall establish for each medicaid nursing facility a financing
33 allowance component rate allocation. The financing allowance component
34 rate shall be rebased annually, effective July 1st, in accordance with
35 the provisions of this section and this chapter.

36 (2) The financing allowance shall be determined by multiplying the
37 net invested funds of each facility by .10, and dividing by the greater
38 of a nursing facility's total resident days from the most recent cost

1 report period or resident days calculated on eighty-five percent
2 facility occupancy. However, assets acquired on or after the effective
3 date of this section shall be grouped in a separate financing allowance
4 calculation that shall be multiplied by .085. The financing allowance
5 factor of .085 shall not be applied to the net invested funds
6 pertaining to new construction or major renovations receiving
7 certificate of need approval or an exemption from certificate of need
8 requirements under chapter 70.38 RCW, or to working drawings that have
9 been submitted to the department of health for construction review
10 approval, prior to the effective date of this section. If a
11 capitalized addition or retirement of an asset will result in a
12 different licensed bed capacity during the ensuing period, the prior
13 period total resident days used in computing the financing allowance
14 shall be adjusted to the greater of the anticipated resident day level
15 or eighty-five percent of the new licensed bed capacity.

16 (3) In computing the portion of net invested funds representing the
17 net book value of tangible fixed assets, the same assets, depreciation
18 bases, lives, and methods referred to in RCW 74.46.330, 74.46.350,
19 74.46.360, 74.46.370, and 74.46.380, including owned and leased assets,
20 shall be utilized, except that the capitalized cost of land upon which
21 the facility is located and such other contiguous land which is
22 reasonable and necessary for use in the regular course of providing
23 resident care shall also be included. Subject to provisions and
24 limitations contained in this chapter, for land purchased by owners or
25 lessors before July 18, 1984, capitalized cost of land shall be the
26 buyer's capitalized cost. For all partial or whole rate periods after
27 July 17, 1984, if the land is purchased after July 17, 1984,
28 capitalized cost shall be that of the owner of record on July 17, 1984,
29 or buyer's capitalized cost, whichever is lower. In the case of leased
30 facilities where the net invested funds are unknown or the contractor
31 is unable to provide necessary information to determine net invested
32 funds, the secretary shall have the authority to determine an amount
33 for net invested funds based on an appraisal conducted according to RCW
34 74.46.360(1).

35 (4) For the purpose of calculating a nursing facility's financing
36 allowance component rate, if a contractor elects to bank licensed beds
37 or to convert banked beds to active service, under chapter 70.38 RCW,
38 the department shall use the facility's anticipated resident occupancy
39 level subsequent to the decrease or increase in licensed bed capacity.

1 However, in no case shall the department use less than eighty-five
2 percent occupancy of the facility's licensed bed capacity after banking
3 or conversion.

4 (5) The financing allowance rate allocation calculated in
5 accordance with this section shall be adjusted to the extent necessary
6 to comply with RCW 74.46.421.

7 NEW SECTION. **Sec. 12.** (1) In the case of a facility that was
8 leased by the contractor as of January 1, 1980, in an arm's-length
9 agreement, which continues to be leased under the same lease agreement,
10 and for which the annualized lease payment, plus any interest and
11 depreciation expenses associated with contractor-owned assets, for the
12 period covered by the prospective rates, divided by the contractor's
13 total resident days, minus the property component rate allocation, is
14 more than the sum of the financing allowance and the variable return
15 rate determined according to this chapter, the following shall apply:

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

25 (b) The sum of the financing allowance computed under (a) of this
26 subsection and the variable return rate shall be compared to the
27 annualized lease payment, plus any interest and depreciation associated
28 with contractor-owned assets, for the period covered by the prospective
29 rates, divided by the contractor's total resident days, minus the
30 property component rate. The lesser of the two amounts shall be called
31 the alternate return on investment rate.

32 (c) The sum of the financing allowance and variable return rate
33 determined according to this chapter or the alternate return on
34 investment rate, whichever is greater, shall be added to the
35 prospective rates of the contractor.

36 (2) In the case of a facility that was leased by the contractor as
37 of January 1, 1980, in an arm's-length agreement, if the lease is
38 renewed or extended under a provision of the lease, the treatment

1 provided in subsection (1) of this section shall be applied, except
2 that in the case of renewals or extensions made subsequent to April 1,
3 1985, reimbursement for the annualized lease payment shall be no
4 greater than the reimbursement for the annualized lease payment for the
5 last year prior to the renewal or extension of the lease.

6 (3) The alternate return on investment component rate allocations
7 calculated in accordance with this section shall be adjusted to the
8 extent necessary to comply with RCW 74.46.421.

9 **Sec. 13.** RCW 74.46.350 and 1980 c 177 s 35 are each amended to
10 read as follows:

11 (1) Buildings, land improvements, and fixed equipment shall be
12 depreciated using the straight-line method of depreciation. For new or
13 replacement building construction or for major renovations, either of
14 which receives certificate of need approval or certificate of need
15 exemption under chapter 70.38 RCW on or after the effective date of
16 this section, the number of years used to depreciate fixed equipment
17 shall be the same number of years as the life of the building to which
18 it is affixed. Major-minor equipment shall be depreciated using either
19 the straight-line method, the sum-of-the-years' digits method, or
20 declining balance method not to exceed one hundred fifty percent of the
21 straight line rate. Contractors who have elected to take either the
22 sum-of-the-years' digits method or the declining balance method of
23 depreciation on major-minor equipment may change to the straight-line
24 method without permission of the department.

25 (2) The annual provision for depreciation shall be reduced by the
26 portion allocable to use of the asset for purposes which are neither
27 necessary nor related to patient care.

28 (3) No further depreciation shall be claimed after an asset has
29 been fully depreciated unless a new depreciation base is established
30 pursuant to RCW 74.46.360.

31 **Sec. 14.** RCW 74.46.370 and 1997 c 277 s 2 are each amended to read
32 as follows:

33 (1) Except for new buildings, major remodels, and major repair
34 projects, as defined in subsection (2) of this section, the contractor
35 shall use lives which reflect the estimated actual useful life of the
36 asset and which shall be no shorter than guideline lives as established
37 by the department. Lives shall be measured from the date on which the

1 assets were first used in the medical care program or from the date of
2 the most recent arm's-length acquisition of the asset, whichever is
3 more recent. In cases where RCW 74.46.360(6)(a) does apply, the
4 shortest life that may be used for buildings is the remaining useful
5 life under the prior contract. In all cases, lives shall be extended
6 to reflect periods, if any, when assets were not used in or as a
7 facility.

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

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

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

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

30 (6) For new or replacement building construction or for major
31 renovations, either of which receives certificate of need approval or
32 certificate of need exemption under chapter 70.38 RCW on or after the
33 effective date of this section, the number of years used to depreciate
34 fixed equipment shall be the same number of years as the life of the
35 building to which it is affixed.

36 NEW SECTION. Sec. 15. If a contractor experiences an increase in
37 state or county property taxes as a result of new building
38 construction, replacement building construction, or substantial

1 building additions that require the acquisition of land, then the
2 department shall adjust the contractor's prospective rates to cover the
3 medicaid share of the tax increase. The rate adjustments shall only
4 apply to construction and additions completed on or after July 1, 1997.
5 The rate adjustments authorized by this section are effective on the
6 first day after July 1, 1999, on which the increased tax payment is
7 due. Rate adjustments made under this section are subject to all
8 applicable cost limitations contained in this chapter.

9 NEW SECTION. **Sec. 16.** Sections 9 through 12 and 15 of this act
10 are each added to part E of chapter 74.46 RCW.

11 NEW SECTION. **Sec. 17.** The following acts or parts of acts, as now
12 existing or hereafter amended, are each repealed, effective June 30,
13 2001:

- 14 (1) RCW 74.46.--- and 1999 c . . . s 9 (section 9 of this act);
- 15 (2) RCW 74.46.--- and 1999 c . . . s 10 (section 10 of this act) &
16 1998 c 322 s 29 (uncodified);
- 17 (3) RCW 74.46.--- and 1999 c . . . s 11 (section 11 of this act);
- 18 (4) RCW 74.46.--- and 1999 c . . . s 12 (section 12 of this act);
- 19 (5) RCW 74.46.350 (Methods of depreciation) and 1999 c . . . s 13
20 (section 13 of this act) & 1980 c 177 s 35;
- 21 (6) RCW 74.46.370 (Lives of assets) and 1999 c . . . s 14 (section
22 14 of this act), 1997 c 277 s 2, & 1980 c 177 s 37; and
- 23 (7) RCW 74.46.--- and 1999 c . . . s 15 (section 15 of this act).

24 NEW SECTION. **Sec. 18.** This act is necessary for the immediate
25 preservation of the public peace, health, or safety, or support of the
26 state government and its existing public institutions. Section 11 of
27 this act takes effect immediately, and sections 1 through 10 and 12
28 through 17 take effect July 1, 1999.

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