
HOUSE BILL 2741

State of Washington

52nd Legislature

1992 Regular Session

By Representative Braddock; by request of Dept. of Social and Health Services

Read first time 01/27/92. Referred to Committee on Appropriations.

1 AN ACT Relating to nursing home auditing and reimbursement;
2 amending RCW 74.46.020, 74.46.050, 74.46.230, 74.46.420, 74.46.430,
3 74.46.460, 74.46.470, 74.46.475, 74.46.481, 74.46.490, 74.46.500,
4 74.46.530, and 74.46.690; reenacting and amending RCW 74.46.180; adding
5 a new section to chapter 74.46 RCW; and repealing RCW 74.46.495.

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

7 **Sec. 1.** RCW 74.46.020 and 1991 sp.s. c 8 s 11 are each amended to
8 read as follows:

9 Unless the context clearly requires otherwise, the definitions in
10 this section apply throughout this chapter.

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

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

4 (3) "Appraisal" means the process of estimating the fair market
5 value or reconstructing the historical cost of an asset acquired in a
6 past period as performed by a professionally designated real estate
7 appraiser with no pecuniary interest in the property to be appraised.
8 It includes a systematic, analytic determination and the recording and
9 analyzing of property facts, rights, investments, and values based on
10 a personal inspection and inventory of the property.

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

21 (5) "Assets" means economic resources of the contractor, recognized
22 and measured in conformity with generally accepted accounting
23 principles.

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

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

28 (8) "Beneficial owner" means:

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

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

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

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

11 (c) Any person who, subject to subparagraph (b) of this subsection,
12 has the right to acquire beneficial ownership of such ownership
13 interest within sixty days, including but not limited to any right to
14 acquire:

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

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

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

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

21 except that, any person who acquires an ownership interest or power
22 specified in subparagraphs (i), (ii), or (iii) of this subparagraph (c)
23 with the purpose or effect of changing or influencing the control of
24 the contractor, or in connection with or as a participant in any
25 transaction having such purpose or effect, immediately upon such
26 acquisition shall be deemed to be the beneficial owner of the ownership
27 interest which may be acquired through the exercise or conversion of
28 such ownership interest or power;

29 (d) Any person who in the ordinary course of business is a pledgee
30 of ownership interest under a written pledge agreement shall not be

1 deemed to be the beneficial owner of such pledged ownership interest
2 until the pledgee has taken all formal steps necessary which are
3 required to declare a default and determines that the power to vote or
4 to direct the vote or to dispose or to direct the disposition of such
5 pledged ownership interest will be exercised; except that:

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

11 (ii) The pledgee agreement, prior to default, does not grant to the
12 pledgee:

13 (A) The power to vote or to direct the vote of the pledged
14 ownership interest; or

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

19 (9) "Capitalization" means the recording of an expenditure as an
20 asset.

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

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

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

1 (13) "Direct care supplies" means medical, pharmaceutical, and
2 other supplies required for the direct nursing and ancillary care of
3 medical care recipients.

4 (14) "Entity" means an individual, partnership, corporation, or any
5 other association of individuals capable of entering enforceable
6 contracts.

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

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

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

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

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

25 (20) "Generally accepted accounting principles" means accounting
26 principles approved by the financial accounting standards board (FASB).

27 (21) "Generally accepted auditing standards" means auditing
28 standards approved by the American institute of certified public
29 accountants (AICPA).

1 (22) "Goodwill" means the excess of the price paid for a business
2 over the fair market value of all other identifiable, tangible, and
3 intangible assets acquired.

4 (23) "Historical cost" means the actual cost incurred in acquiring
5 and preparing an asset for use, including feasibility studies,
6 architect's fees, and engineering studies.

7 (24) "Imprest fund" means a fund which is regularly replenished in
8 exactly the amount expended from it.

9 (25) "Joint facility costs" means any costs which represent
10 resources which benefit more than one facility, or one facility and any
11 other entity.

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

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

28 (28) "Medical care recipient" or "recipient" means an individual
29 determined eligible by the department for the services provided in
30 chapter 74.09 RCW.

1 (29) "Net book value" means the historical cost of an asset less
2 accumulated depreciation.

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

10 (31) "Operating lease" means a lease under which rental or lease
11 expenses are included in current expenses in accordance with generally
12 accepted accounting principles.

13 (32) "Owner" means a sole proprietor, general or limited partners,
14 and beneficial interest holders of five percent or more of a
15 corporation's outstanding stock.

16 (33) "Ownership interest" means all interests beneficially owned by
17 a person, calculated in the aggregate, regardless of the form which
18 such beneficial ownership takes.

19 (34) "Patient day" or "client day" means a calendar day of care
20 which will include the day of admission and exclude the day of
21 discharge; except that, when admission and discharge occur on the same
22 day, one day of care shall be deemed to exist.

23 (35) "Professionally designated real estate appraiser" means an
24 individual who is regularly engaged in the business of providing real
25 estate valuation services for a fee, and who is deemed qualified by a
26 nationally recognized real estate appraisal educational organization on
27 the basis of extensive practical appraisal experience, including the
28 writing of real estate valuation reports as well as the passing of
29 written examinations on valuation practice and theory, and who by
30 virtue of membership in such organization is required to subscribe and

1 adhere to certain standards of professional practice as such
2 organization prescribes.

3 (36) "Qualified therapist" means:

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

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

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

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

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

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

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

19 (h) An occupational therapist who is a graduate of a program in
20 occupational therapy, or who has the equivalent of such education or
21 training; and

22 (i) A respiratory care practitioner certified under chapter 18.89
23 RCW.

24 (37) "Questioned costs" means those costs which have been
25 determined in accordance with generally accepted accounting principles
26 but which may constitute disallowed costs or departures from the
27 provisions of this chapter or rules and regulations adopted by the
28 department.

29 (38) "Records" means those data supporting all financial statements
30 and cost reports including, but not limited to, all general and

1 subsidiary ledgers, books of original entry, and transaction
2 documentation, however such data are maintained.

3 (39) "Related organization" means an entity which is under common
4 ownership and/or control with, or has control of, or is controlled by,
5 the contractor.

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

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

13 (40) "Restricted fund" means those funds the principal and/or
14 income of which is limited by agreement with or direction of the donor
15 to a specific purpose.

16 (41) "Secretary" means the secretary of the department of social
17 and health services.

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

20 (43) "Physical plant capital improvement" means a capitalized
21 improvement that is limited to an improvement to the building or the
22 related physical plant.

23 **Sec. 2.** RCW 74.46.050 and 1985 c 361 s 5 are each amended to read
24 as follows:

25 If the cost report is not properly completed or if it is not
26 received by the due date, all or part of any payments due under the
27 contract may be withheld by the department until such time as the
28 required cost report is properly completed and received. Intentional
29 misreporting intended to affect or manipulate cost growth limits in

1 this chapter is subject to civil fines or other sanctions adopted by
2 the department in rule. The department shall issue special cost
3 reporting instructions for 1992 to accommodate changes in cost centers
4 effective July 1, 1992.

5 **Sec. 3.** RCW 74.46.180 and 1987 c 476 s 1 and 1987 c 283 s 9 are
6 each reenacted and amended to read as follows:

7 (1) The state shall make payment of any underpayments within thirty
8 days after the date the preliminary or final settlement report is
9 submitted to the contractor.

10 (2) A contractor found to have received either overpayments or
11 erroneous payments under a preliminary or final settlement shall refund
12 such payments to the state within thirty days after the date the
13 preliminary or final settlement report is submitted to the contractor,
14 subject to the provisions of subsections (3), (4), and (7) of this
15 section.

16 (3) Within the cost centers of nursing services and food, all
17 savings resulting from the respective allowable costs being lower than
18 the respective reimbursement rate paid to the contractor during the
19 report period shall be refunded to the department. However, in
20 computing a preliminary or final settlement, savings in a cost center
21 may be shifted to cover a deficit in another cost center up to the
22 amount of any savings: PROVIDED, That not more than twenty percent of
23 the rate in a cost center may be shifted into that cost center and no
24 shifting may be made into the property cost center: PROVIDED FURTHER,
25 That there shall be no shifting out of nursing services, and savings in
26 food shall be shifted only to cover deficits in the nursing services
27 cost center: PROVIDED FURTHER, That there shall be no shifting from
28 the operational to the administrative cost center.

1 (4) Within the administrative, operational, and property cost
2 centers (~~((of administration and operations and property))~~), the
3 contractor shall retain at least fifty percent, but not more than
4 seventy-five percent, of any savings resulting from the respective
5 audited allowable costs being lower than the respective reimbursement
6 rates paid to the contractor during the report period multiplied by the
7 number of authorized medical care client days in which said rates were
8 in effect, except that no savings may be retained if reported costs in
9 the property cost center (~~((and))~~), the (~~((administration))~~) administrative
10 cost center, and (~~((operations))~~) the operational cost center exceed
11 audited allowable costs by ten cents or more per patient day. The
12 secretary, by rule and regulation, shall establish the basis for the
13 specific percentages of savings to the contractors. Such rules and
14 regulations may provide for differences in the percentages allowed for
15 each cost center to individual facilities based on performance measures
16 related to administrative efficiency.

17 (5) All (~~((allowances))~~) return on investment rate payments provided
18 by RCW 74.46.530 shall be retained by the contractor to the extent net
19 invested funds are substantiated by department field audit. Any
20 industrial insurance dividend or premium discount under RCW 51.16.035
21 shall be retained by the contractor to the extent that such dividend or
22 premium discount is attributable to the contractor's private patients.

23 (6) In the event the contractor fails to make repayment in the time
24 provided in subsection (2) of this section, the department shall
25 either:

26 (a) Deduct the amount of refund due, plus any interest accrued
27 under RCW 43.20B.695, from payment amounts due the contractor; or

28 (b) In the instance the contract has been terminated, (i) deduct
29 the amount of refund due, plus interest assessed at the rate and in the
30 manner provided in RCW 43.20B.695, from any payments due; or (ii)

1 recover the amount due, plus any interest assessed under RCW
2 43.20B.695, from security posted with the department or by any other
3 lawful means.

4 (7) Where the facility is pursuing timely-filed judicial or
5 administrative remedies in good faith regarding settlement issues, the
6 contractor need not refund nor shall the department withhold from the
7 facility current payment amounts the department claims to be due from
8 the facility but which are specifically disputed by the contractor. If
9 the judicial or administrative remedy sought by the facility is not
10 granted after all appeals are exhausted or mutually terminated, the
11 facility shall make payment of such amounts due plus interest accrued
12 from the date of filing of the appeal, as payable on judgments, within
13 sixty days of the date such decision is made.

14 **Sec. 4.** RCW 74.46.230 and 1980 c 177 s 23 are each amended to read
15 as follows:

16 (1) The necessary and ordinary one-time expenses directly incident
17 to the preparation of a newly constructed or purchased building by a
18 contractor for operation as a licensed facility shall be allowable
19 costs. These expenses shall be limited to start-up and organizational
20 costs incurred prior to the admission of the first patient.

21 (2) Start-up costs shall include, but not be limited to,
22 administrative and nursing salaries, utility costs, taxes, insurance,
23 repairs and maintenance, and training; except, that they shall exclude
24 expenditures for capital assets. These costs will be allowable in the
25 (~~administration and operations~~) administrative cost center if they
26 are amortized over a period of not less than sixty months beginning
27 with the month in which the first patient is admitted for care.

28 (3) Organizational costs are those necessary, ordinary, and
29 directly incident to the creation of a corporation or other form of

1 business of the contractor including, but not limited to, legal fees
2 incurred in establishing the corporation or other organization and fees
3 paid to states for incorporation; except, that they do not include
4 costs relating to the issuance and sale of shares of capital stock or
5 other securities. Such organizational costs will be allowable in the
6 (~~administration and operations~~) administrative cost center if they
7 are amortized over a period of not less than sixty months beginning
8 with the month in which the first patient is admitted for care.

9 **Sec. 5.** RCW 74.46.420 and 1985 c 361 s 18 are each amended to read
10 as follows:

11 The following principles are inherent in RCW 74.46.430 through
12 74.46.590:

13 (1) Reimbursement rates will be set prospectively on a per patient
14 day basis (~~and~~).

15 (2) The rates (~~so established~~) in the nursing services, food,
16 administrative, and operational cost centers, will be adjusted at the
17 time they are set for economic (~~conditions and~~) trends (~~in~~
18 accordance with appropriations made by the legislature as consistent
19 with federal requirements for the period to be covered by such rates)
20 and conditions at the lower of: (a) The most recent nursing facility
21 with capital and medical fees price index eighteen-month forecast
22 provided by the health care financing administration (HCFA) or (b) one
23 and one-half times the median percentage cost growth limit of the
24 nursing facility's peer group in each cost center used for current July
25 1 rate setting as provided in this chapter. If HCFA ceases to provide
26 the forecast in the future the department shall select another
27 forecast.

28 (3) The forecast referenced in subsection (2)(a) of this section
29 shall be regionalized by multiplying the HCFA forecast percentage by a

1 ratio or fraction. The numerator of the fraction shall be the
2 percentage of growth during the most recent calendar report year in the
3 medical care expenditure category of the consumer price index for all
4 urban consumers (CPI-U) issued by the United States department of labor
5 bureau of labor statistics for the west region. The denominator of
6 the fraction shall be the percentage of growth for the United States as
7 a whole as indicated by the medical care expenditure category of the
8 CPI-U during the same most recent calendar report year.

9 (4) Prospective rates in the administrative and operational cost
10 centers shall not be adjusted for economic trends and conditions as
11 authorized in this chapter above the pertinent prospective peer group
12 per patient day rate ceilings set forth in this chapter.

13 (5) If a July 1 rate is based on a cost report covering less than
14 twelve months, the department shall reduce proportionally the
15 adjustment authorized by this section for economic trends and
16 conditions.

17 **Sec. 6.** RCW 74.46.430 and 1987 2nd ex.s. c 1 s 2 are each amended
18 to read as follows:

19 (1) The department, as provided by this chapter, will determine
20 prospective cost-related reimbursement rates for services provided to
21 medical care recipients. Each rate so determined shall represent the
22 contractor's maximum compensation within each cost center for each
23 patient day for such medical care recipient.

24 (2) As required, the department may modify such maximum per patient
25 day rates pursuant to the administrative review provisions of RCW
26 74.46.780.

27 ~~(3) ((Until the effective date of RCW 74.46.510 and 74.46.530, the~~
28 ~~maximum prospective reimbursement rates for the administration and~~

1 operations and the property cost centers shall be established based
2 upon a minimum facility occupancy level of eighty five percent.

3 ~~(4) On and after the effective date of RCW 74.46.510 and~~
4 ~~74.46.530,)) The maximum prospective reimbursement rates for the~~
5 ~~((administration and operations)) administrative, operational, and the~~
6 ~~property cost centers, and the return on investment ((allowance)) shall~~
7 ~~be established based upon a minimum facility occupancy level of eighty-~~
8 ~~five percent.~~

9 ~~((+5)) (4) All contractors shall be required to adjust and~~
10 ~~maintain wages for all employees to a minimum hourly wage ((established~~
11 ~~by the legislature in the biennial appropriations act, if the~~
12 ~~legislature appropriates moneys to fund prospectively the portion of~~
13 ~~the minimum wage attributable to services to medicaid patients.~~
14 ~~Prospective rate revisions to fund any minimum wage increases shall be~~
15 ~~made only on the dates authorized in the appropriation act. The~~
16 ~~department shall by regulation limit reimbursement to the amount~~
17 ~~appropriated for legislatively authorized enhancement for~~
18 ~~nonadministrative wages and benefits above the moneys necessary to fund~~
19 ~~minimum wages specified in this section. The department in considering~~
20 ~~reimbursement for legislatively authorized wage enhancements will take~~
21 ~~into consideration facility wage history over the past three cost~~
22 ~~report periods)) of four dollars and seventy-six cents per hour~~
23 ~~beginning January 1, 1988, and five dollars and fifteen cents per hour~~
24 ~~beginning January 1, 1989.~~

25 **Sec. 7.** RCW 74.46.460 and 1987 c 476 s 3 are each amended to read
26 as follows:

27 (1) Each contractor's reimbursement rates will be determined
28 prospectively at least once each calendar year, to be effective July
29 1st.

1 (2) Rates may be adjusted as determined by the department to take
2 into account variations in the distribution of patient classifications
3 or changes in patient characteristics from the prior reporting year,
4 program changes required by the department, or changes in staffing
5 levels at a facility required by the department. Rates shall be
6 adjusted by the amount of legislatively authorized enhancements in
7 accordance with RCW 74.46.430(5) and 74.46.470(2). Rates may also be
8 adjusted to cover costs associated with placing a nursing home in
9 receivership which costs are not covered by the rate of the former
10 contractor, including: Compensation of the receiver, reasonable
11 expenses of receivership and transition of control, and costs incurred
12 by the receiver in carrying out court instructions or rectifying
13 deficiencies found. Rates shall be adjusted for any capitalized
14 additions or replacements made as a condition for licensure or
15 certification. Rates shall be adjusted for capitalized improvements
16 done under RCW 74.46.465.

17 ~~(3) ((Where the contractor participated in the provisions of~~
18 ~~prospective cost related reimbursement in effect prior to July 1, 1983,~~
19 ~~such contractor's prospective rate effective July 1, 1983, will be~~
20 ~~determined utilizing the contractor's desk reviewed allowable costs for~~
21 ~~calendar year 1982.~~

22 ~~(4)) All prospective reimbursement rates for ((1984 and~~
23 ~~thereafter)) all rate periods shall be determined by utilizing the~~
24 ~~prior year's desk reviewed cost reports, subject to all limitations and~~
25 ~~principles of rate setting contained in this chapter or established by~~
26 ~~rule under the department's rule making authority.~~

27 **Sec. 8.** ~~RCW 74.46.470 and 1987 c 476 s 4 are each amended to read~~
28 ~~as follows:~~

1 ~~(1) A contractor's reimbursement rates for medical care recipients~~
2 ~~will be determined utilizing net invested funds and desk reviewed cost~~
3 ~~report data within the following cost centers:~~

4 ~~(a) Nursing services;~~

5 ~~(b) Food;~~

6 ~~(c) ((Administration and operations; and)) Administrative;~~

7 ~~(d) Operational; and~~

8 ~~(e) Property.~~

9 (2) There shall be for the time period January 1988 through June
10 1990 only an enhancement cost center established to reimburse
11 contractors for specific legislatively authorized enhancements for
12 nonadministrative wages and benefits to ensure that such enhancements
13 are used exclusively for the legislatively authorized purposes. For
14 purposes of settlement, funds appropriated to this cost center shall
15 only be used for expenditures for which the legislative authorization
16 is granted. Such funds may be used only in the following
17 circumstances:

18 (a) The contractor has increased expenditures for which legislative
19 authorization is granted to at least the highest level paid in any of
20 the last three cost years, plus, beginning July 1, 1987, any percentage
21 inflation adjustment as was granted each year under RCW 74.46.495; and

22 (b) All funds shifted from the enhancement cost center are shown to
23 have been expended for legislatively authorized enhancements.

24 (3) If the contractor does not spend the amount appropriated to
25 this cost center in the legislatively authorized manner, then the
26 amounts not appropriately spent shall be recouped at preliminary or
27 final settlement pursuant to RCW 74.46.160.

28 (4) For purposes of this section, "nonadministrative wages and
29 benefits" means wages and payroll taxes paid with respect to, and the
30 employer share of the cost of benefits provided to, employees in job

1 classes specified in an appropriation, which may not include
2 administrators, assistant administrators, or administrators in
3 training.

4 (5) Amounts expended in the enhancement cost center in excess of
5 the minimum wage established under RCW 74.46.430 are subject to all
6 provisions contained in this chapter.

7 **Sec. 9.** RCW 74.46.475 and 1985 c 361 s 13 are each amended to read
8 as follows:

9 (1) The department shall analyze the submitted cost report of each
10 contractor to determine if the information is correct, complete, and
11 reported in conformance with generally accepted accounting principles,
12 the requirements of this chapter and such rules (~~and regulations~~) as
13 the (~~secretary~~) department may adopt. If the analysis finds that the
14 cost report is incorrect or incomplete or that some costs reported are
15 unallowable, the department may make adjustments to the reported
16 information for purposes of establishing reimbursement rates. A
17 schedule of such adjustments shall be provided to contractors and shall
18 include an explanation for the adjustment and the dollar amount of the
19 adjustment. Adjustments shall be subject to review and appeal as
20 provided in this chapter.

21 (2) The department shall accumulate data from properly completed
22 cost reports for use in:

- 23 (a) Exception profiling; and
- 24 (b) Establishing rates.

25 (3) The department may further utilize such accumulated data for
26 analytical, statistical, or informational purposes as necessary.

27 **Sec. 10.** RCW 74.46.481 and 1991 sp.s. c 8 s 16 are each amended to
28 read as follows:

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

20 (2) The department shall adopt ~~((by))~~ through administrative rules
21 a method for establishing a nursing services cost center rate
22 consistent with the principles stated in this section.

23 (3) Utilizing regression or other statistical technique, the
24 department shall determine a reasonable limit on facility nursing staff
25 taking into account facility patient characteristics. For purposes of
26 this section, facility nursing staff refers to registered nurses,
27 licensed practical nurses and nursing assistants employed by the
28 facility or obtained through temporary labor contract arrangements.
29 Effective January 1, 1988, the hours associated with the training of
30 nursing assistants and the supervision of that training for nursing

1 assistants shall not be included in the calculation of facility nursing
2 staff. In selecting a measure of patient characteristics, the
3 department shall take into account:

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

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

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

13 (4) No facility shall receive reimbursement for nursing staff
14 levels in excess of the limit(~~(, except that, if a facility was~~
15 ~~reimbursed for a nursing staff level in excess of the limit as of June~~
16 ~~30, 1983, the facility may chose [choose] to continue to receive its~~
17 ~~June, 1983 nursing services rate plus any adjustments in rates, such as~~
18 ~~adjustments for economic trends, made available to all facilities)).~~
19 However, nursing staff levels established under subsection (3) of this
20 section shall not apply to the nursing services cost center
21 reimbursement rate for the pilot facility especially designed to meet
22 the needs of persons living with AIDS as defined by RCW 70.24.017 and
23 specifically authorized for this purpose under the 1989 amendment to
24 the Washington state health plan (~~([1989 1st ex.s. c 9]. The~~
25 ~~reasonableness limit established pursuant to this subsection shall~~
26 ~~remain in effect for the period July 1, 1983 through June 30, 1985. At~~
27 ~~that time the department may revise the measure of patient~~
28 ~~characteristics or method used to establish the limit)), chapter 9,
29 Laws of 1989 1st ex. sess.~~

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

6 (6) ~~If a facility's nursing staff level is below the limit~~
7 ~~specified in subsection (3) of this section, the department shall~~
8 ~~determine the percentage increase for all items included in the nursing~~
9 ~~services cost center between the facility's most recent cost reporting~~
10 ~~period and the next prior cost reporting period.~~

11 (a) ~~If the percentage cost increase for a facility is below the~~
12 ~~increase in the selected index for the same time period, the facility's~~
13 ~~reimbursement rate in the nursing services cost center shall equal the~~
14 ~~facility's cost from the most recent cost reporting period plus any~~
15 ~~allowance for inflation provided by legislative appropriation.~~

16 (b) ~~If the percentage cost increase for a facility exceeds the~~
17 ~~increase in the selected index, the department shall limit the cost~~
18 ~~used for setting the facility's rate in the nursing services cost area~~
19 ~~to a level reflecting the increase in the selected index.~~

20 (7) ~~If the facility's nursing staff level exceeds the~~
21 ~~reasonableness limit established in subsection (3) of this section, the~~
22 ~~department shall determine the increase for all items included in the~~
23 ~~nursing services cost center between the facility's most recent cost~~
24 ~~reporting period and the next prior cost reporting period.~~

25 (a) ~~If the percentage cost increase for a facility is below the~~
26 ~~increase in the index selected pursuant to subsection (5) of this~~
27 ~~section, the facility's reimbursement rate in the nursing cost center~~
28 ~~shall equal the facility's cost from the most recent cost reporting~~
29 ~~period adjusted downward to reflect the limit on nursing staff, plus~~

1 any allowance for inflation provided by legislative appropriation
2 subject to the provisions of subsection (4) of this section.

3 (b) If the percentage cost increase for a facility exceeds the
4 increase in the selected index, the department shall limit the cost
5 used for setting the facility's rate in the nursing services cost
6 center to a level reflecting the nursing staff limit and the cost
7 increase limit, subject to the provisions of subsection (4) of this
8 section, plus any allowance for inflation provided by legislative
9 appropriation.

10 (8) Prospective rates for the nursing services cost center, for
11 state fiscal year 1992 only, shall not be subject to the cost growth
12 index lid in subsections (5), (6), and (7) of this section. The lid
13 shall apply for state fiscal year 1991 rate setting and all state
14 fiscal years subsequent to fiscal year 1992.) The department shall
15 divide into two peer groups nursing facilities located in the state of
16 Washington providing services to medicaid residents: (a) Those
17 facilities located within a metropolitan statistical area (MSA) as
18 defined and determined by the United States office of management and
19 budget (OMB) and (b) those not located in such an area. The department
20 shall then calculate the percentage cost growth in nursing services for
21 each facility on a per patient day basis between particular report
22 periods specified in subsection (6) of this section. The individual
23 facility costs compared shall be raw reported to raw reported from the
24 selected report periods. All cost data from the selected periods shall
25 be included, regardless of the length of individual facility periods.
26 The facilities in each peer group shall then be arrayed from lowest to
27 highest by magnitude of reported to reported nursing services cost
28 growth between the selected periods and the percentage growth at the
29 median or fiftieth percentile of each group shall be determined.

1 (6) For July 1, 1992, prospective rate setting, the department
2 shall utilize for each peer group its raw reported median percentage
3 nursing services cost growth from 1989 to 1990. Thereafter, the
4 department shall utilize, for each of the two July 1 prospective rate
5 settings occurring in each state fiscal budget-setting biennium, each
6 peer group's median percentage reported nursing services cost growth
7 between the two calendar report years terminating thirty months and
8 eighteen months prior to the start of each biennium. Thus, for July 1,
9 1993, and July 1, 1994, prospective rate setting, the department shall
10 utilize for each peer group of facilities its median adjusted nursing
11 services cost growth from 1990 to 1991; for July 1, 1995, and July 1,
12 1996, rate setting, the department shall utilize for each peer group
13 its median growth from 1992 to 1993; for July 1, 1997, and July 1,
14 1998, rate setting, the department shall utilize for each peer group
15 its median growth from 1994 to 1995, and so forth for all future rate
16 setting.

17 (7) Beginning July 1, 1992, a facility's July 1 prospective nursing
18 services rate shall be set according to the following procedures:

19 (a) Reported nursing services costs from the most recent report
20 period will be desk reviewed and costs determined at the outset to be
21 unallowable, including excess costs associated with purchased nursing
22 services as authorized by subsection (1) of this section and costs
23 associated with excess nursing staff hours as authorized and determined
24 under subsections (3) and (4) of this section, will be removed. The
25 remaining cost shall then be divided by allowable, adjusted patient
26 days from the same report period to arrive at an initial per patient
27 day nursing services cost.

28 (b) Allowable nursing services costs from the report period
29 immediately preceding the most recent period (the "next prior" cost
30 report period), reflecting all historical desk-review and field audit

1 adjustments regardless of whether such adjustments are or are not the
2 subject of pending administrative or judicial review, will be divided
3 by patient days from the next prior period, reflecting all historical
4 desk-review and field audit adjustments to them regardless of whether
5 such adjustments are the subject of pending administrative or judicial
6 review, to arrive at an allowable per patient day nursing services cost
7 from the next prior period. This next prior period per patient day
8 cost will then be inflated by the applicable nursing services median
9 cost growth for that facility's peer group as determined by subsections
10 (5) and (6) of this section to arrive at the facility's particular
11 nursing services cost growth limit for July 1 prospective rate setting.

12 (c) Per patient day nursing services costs from the most recent
13 report period remaining after the initial review indicated in (a) of
14 this subsection that are in excess of the peer group median inflated
15 "next prior" period per patient day costs as indicated in (b) of this
16 subsection shall also be adjusted out. The facility's peer group
17 median cost growth limit shall not be applied if the facility's next
18 prior cost report contains less than six months of cost report data.

19 (d) The costs remaining after (c) of this subsection will be
20 adjusted for economic trends and conditions as authorized by RCW
21 74.46.420 and the resulting per patient day figure shall be the July 1
22 nursing services prospective rate.

23 (8) Rates calculated on the basis of the most recent adjustment
24 information available to the department prior to the July 1
25 commencement of the new rate, regardless of whether the adjustments are
26 subject to pending administrative or judicial review, shall not be
27 adjusted to reflect future administrative or judicial rulings, whether
28 final or not. Only the particular rate under review shall be affected
29 by future rulings, if required to be amended, and the department shall

1 not recalculate a nursing facility's succeeding rate(s) based upon any
2 new adjusted cost information.

3 (9) The department is authorized to determine on a systematic basis
4 facilities with unmet patient care service needs. The department may
5 increase the nursing services cost center prospective rate for a
6 facility beyond the level determined in accordance with subsection (6)
7 of this section if the facility's actual and reported nursing staffing
8 is one standard error or more below predicted staffing as determined
9 according to the method selected pursuant to subsection (3) of this
10 section and the facility has unmet patient care service needs:
11 PROVIDED, That prospective rate increases authorized by this subsection
12 shall be funded only from legislative appropriations made for this
13 purpose and the increases shall be conditioned on specified
14 improvements in patient care at such facilities.

15 (10) The department shall establish a method for identifying
16 patients with exceptional care requirements and a method for
17 establishing or negotiating on a consistent basis rates for such
18 patients.

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

28 (a) Increases in ((acuity)) debility levels of contractors'
29 residents determined in accordance with the department's assessment and
30 reporting procedures and requirements utilizing the minimum data set;

- 1 (b) Staffing patterns for similar facilities;
2 (c) Physical plant of contractor; and
3 (d) Survey, inspection of care, and department consultation
4 results.

5 **Sec. 11.** RCW 74.46.490 and 1983 1st ex.s. c 67 s 25 are each
6 amended to read as follows:

7 (1) The food cost center shall include for reporting purposes all
8 costs for bulk and raw food and beverages purchased for the dietary
9 needs of medical care recipients.

10 (2) ~~((Reimbursement for the food cost center shall be at the
11 January 1, 1983, reimbursement rate, adjusted annually for inflation.))~~
12 The department shall utilize the same two peer groups of medicaid
13 nursing facilities required to be used in calculating the nursing
14 services cost growth limit and shall calculate the fiftieth percentile
15 or median growth in raw reported food costs for each peer group
16 utilizing the same general procedures set forth in RCW 74.46.481 (5)
17 and (6).

18 (3) For July 1, 1992, prospective rate setting, the department
19 shall utilize for each peer group its median percentage reported food
20 cost growth from 1989 to 1990. Thereafter, the department shall
21 utilize, for each of the two July 1 prospective rate settings occurring
22 in each state fiscal budget-setting biennium, each peer group's median
23 percentage reported food cost growth between the two calendar report
24 years terminating thirty months and eighteen months prior to the start
25 of each biennium.

(4) Beginning July 1, 1992, a facility's July
26 1 prospective food rate shall be set according to the following
27 procedures:

28 (a) Reported food costs from the most recent report period will
29 be desk reviewed and costs determined at the outset to be unallowable

1 will be removed. The remaining cost shall then be divided by
2 allowable, adjusted patient days from the same report period to arrive
3 at an initial per patient day food cost.

4 (b) Allowable food costs from the report period immediately
5 preceding the most recent period (the "next prior" cost report period),
6 reflecting all desk review and field audit adjustments regardless of
7 whether such adjustments are or are not the subject of pending
8 administrative or judicial review, will be divided by allowable patient
9 days from the next prior period, reflecting all desk review and field
10 audit adjustments to them regardless of whether such adjustments are or
11 are not the subject of pending administrative or judicial review, to
12 arrive at an allowable per patient day food cost from the next prior
13 period. This next prior period per patient day cost will then be
14 inflated by the applicable reported food cost median growth for that
15 facility's peer group.

16 (c) Per patient day food costs from the most recent report period
17 remaining after the initial desk review indicated in (a) of this
18 subsection which are in excess of the median inflated "next prior"
19 period per patient day costs as indicated in (b) of this subsection
20 shall also be adjusted out. The facility's peer group median cost
21 growth limit shall not be applied if the facility's next prior cost
22 report contains less than six months of cost report data.

23 (d) The costs remaining after (c) of this subsection will be
24 adjusted for economic trends and conditions as authorized by RCW
25 74.46.420 and the resulting per patient day figure shall be the July 1
26 food prospective rate.

27 (5) Rates calculated on the basis of the most recent adjustment
28 information available to the department prior to the July 1
29 commencement of the new rate, regardless of whether the adjustments are
30 subject to pending administrative or judicial review, shall not be

1 adjusted to reflect future administrative or judicial rulings, whether
2 final or not. Only the particular rate under review shall be affected
3 by future rulings, if required to be amended, and the department shall
4 not recalculate a nursing facility's succeeding rate(s) based upon any
5 new adjusted cost information.

6 **Sec. 12.** RCW 74.46.500 and 1980 c 177 s 50 are each amended to
7 read as follows:

8 (1) The ~~((administration and operations))~~ administrative cost
9 center shall include ((all items not included in the cost centers of
10 nursing services, food, and property.

11 ~~(2) The administration and operations cost center reimbursement~~
12 ~~rate for each facility shall be based on the computation in this~~
13 ~~subsection and shall not exceed the eighty-fifth percentile of (a) the~~
14 ~~rates of all reporting facilities derived from the computation below,~~
15 ~~or (b) reporting facilities grouped in accordance with subsection (3)~~
16 ~~of this section:~~

17 ~~AR = TAC/TPD, where~~

18 ~~AR = the administration and operations cost center reimbursement rate~~
19 ~~for a facility;~~

20 ~~TAC = the total costs of the administration and operations cost~~
21 ~~center plus the retained savings from such cost center as provided~~
22 ~~in RCW 74.46.180 of a facility; and~~

23 ~~TPD = the total patient days for a facility for the prior year.~~

24 (3) ~~The secretary may group facilities based on factors which could~~
25 ~~reasonably influence cost requirements of this cost center, other than~~
26 ~~ownership or legal organization characteristics))~~ for cost reporting
27 purposes all administrative, oversight, and management costs whether
28 facility on-site or allocated in accordance with a department-approved
29 joint-cost allocation methodology. Such costs shall be identical to

1 the cost report line item costs categorized under "administration" in
2 the "administration and operations" combined cost center existing prior
3 to July 1, 1992, except for direct care supplies.

4 (2) The department shall utilize the same two peer groups of
5 medicaid nursing facilities required to be used in calculating the
6 nursing services cost growth limit and shall calculate the fiftieth
7 percentile or median growth in raw reported administrative costs for
8 each peer group utilizing the same general procedures set forth in RCW
9 74.46.481 (5) and (6).

10 (3) For July 1, 1992, prospective rate setting, the department
11 shall utilize for each peer group its median percentage reported
12 administrative cost growth from 1989 to 1990. Thereafter, the
13 department shall utilize, for each of the two July 1 prospective rate
14 settings occurring in each state fiscal budget-setting biennium, each
15 peer group's median percentage reported administrative cost growth
16 between the two calendar report years terminating thirty months and
17 eighteen months prior to the start of each biennium.

18 (4) Beginning July 1, 1992, a facility's July 1 prospective
19 administrative rate shall be set according to the following procedures:

20 (a) Reported administrative costs from the most recent report
21 period will be desk reviewed and costs determined at the outset to be
22 unallowable will be removed. The remaining cost shall then be divided
23 by allowable, adjusted patient days from the same report period to
24 arrive at an initial per patient day administrative cost.

25 (b) Allowable administrative costs from the report period
26 immediately preceding the most recent period (the "next prior" cost
27 report period), reflecting all desk review and field audit adjustments
28 regardless of whether such adjustments are or are not the subject of
29 pending administrative or judicial review, will be divided by allowable
30 patient days from the next prior period, reflecting all desk review and

1 field audit adjustments to them regardless of whether such adjustments
2 are or are not the subject of pending administrative or judicial
3 review, to arrive at an allowable per patient day administrative cost
4 from the next prior period. This next prior period per patient day
5 cost will then be inflated by the applicable reported administrative
6 cost median growth for that facility's peer group.

7 (c) Per patient day, administrative costs from the most recent
8 report period remaining after the initial desk review indicated in (a)
9 of this subsection which are in excess of the median inflated "next
10 prior" period per patient day costs as indicated by (b) of this
11 subsection shall also be adjusted out. The facility's peer group
12 median cost growth limit shall not be applied if the facility's next
13 prior cost report contains less than six months of cost report data.

14 (d) The per patient day costs remaining after (c) of this
15 subsection will be adjusted for economic trends and conditions as
16 authorized by RCW 74.46.420.

17 (e) The resulting per patient day figures for all facilities in
18 each peer group will be arrayed from lowest to highest and the fiftieth
19 percentile or median figure for each peer group will be determined.

20 (f) The nursing facility's July 1 administrative prospective rate
21 shall be the lesser of: (i) The per patient day figure resulting after
22 (d) of this subsection or (ii) one hundred ten percent of the median
23 administrative per patient day figure of its peer group which shall
24 constitute the administrative prospective rate ceiling for all
25 facilities in the peer group.

26 (5) Rates calculated on the basis of the most recent adjustment
27 information available to the department prior to the July 1
28 commencement of the new rate, regardless of whether the adjustments are
29 subject to pending administrative or judicial review, shall not be
30 adjusted to reflect future administrative or judicial rulings, whether

1 final or not. Only the particular rate under review shall be affected
2 by future rulings, if required to be amended, and the department shall
3 not recalculate a nursing facility's succeeding rate(s) based upon any
4 new adjusted cost information.

5 NEW SECTION. Sec. 13. A new section is added to chapter 74.46 RCW
6 to read as follows:

7 (1) The operational cost center shall include for cost reporting
8 purposes all costs of the daily operation of the facility not included
9 in nursing services and related care, food, administrative, or property
10 costs, whether such costs are facility on-site or allocated in
11 accordance with a department-approved joint-cost allocation
12 methodology. Such costs shall be identical to all cost report line
13 item costs categorized under "operations" in the combined
14 "administration and operations" cost center existing prior to July 1,
15 1992.

16 (2) The department shall utilize the same two peer groups of
17 medicaid nursing facilities required to be used in calculating the
18 nursing services cost growth limit and shall calculate the fiftieth
19 percentile or median growth in raw reported operational costs for each
20 peer group utilizing the same general procedures set forth in RCW
21 74.46.481 (5) and (6).

22 (3) For July 1, 1992, prospective rate setting, the department
23 shall utilize for each peer group its median percentage reported
24 operational cost growth from 1989 to 1990. Thereafter, the department
25 shall utilize, for each of the two July 1 prospective rate settings
26 occurring in each state fiscal budget-setting biennium, each peer
27 group's median percentage reported operational cost growth between the
28 two calendar report years terminating thirty months and eighteen months
29 prior to the start of each biennium.

1 (4) Beginning July 1, 1992, a facility's July 1 prospective
2 operational rate shall be set according to the following procedures:

3 (a) Reported operational costs from the most recent report period
4 will be desk reviewed and costs determined at the outset to be
5 unallowable will be removed. The remaining cost shall then be divided
6 by allowable, adjusted patient days from the same report period to
7 arrive at an initial per patient day operational cost.

8 (b) Allowable operational costs from the report period immediately
9 preceding the most recent period (the "next prior" cost report period),
10 reflecting all desk review and field audit adjustments regardless of
11 whether such adjustments are or are not the subject of pending
12 administrative or judicial review, will be divided by patient days from
13 the next prior period, reflecting all desk review and field audit
14 adjustments to them regardless of whether such adjustments are the
15 subject of pending administrative or judicial review, to arrive at an
16 allowable per patient day operational cost from the next prior period.
17 This prior period per patient day cost will then be inflated by the
18 applicable reported operational cost median growth for that facility's
19 peer group.

20 (c) Per patient day operational costs from the most recent report
21 period remaining after the initial desk review indicated in (a) of this
22 subsection which are in excess of the median inflated "next prior"
23 period per patient day costs as indicated in (b) of this subsection
24 shall also be adjusted out. The facility's peer group median cost
25 growth limit shall not be applied if the facility's next prior cost
26 report contains less than six months of cost report data.

27 (d) The per patient day costs remaining after (c) of this
28 subsection will be adjusted for economic trends and conditions as
29 authorized by RCW 74.46.420.

1 (e) The resulting per patient day figures for all facilities in
2 each peer group will be arrayed from lowest to highest and the fiftieth
3 percentile or median figure for each group will be determined.

4 (f) The nursing facility's July 1 operational prospective rate
5 shall be the lesser of: (i) The per patient day figure resulting after
6 (d) of this subsection or (ii) one hundred twenty-five percent of the
7 median operational per patient day figure of its peer group which shall
8 constitute the operational prospective rate ceiling for all facilities
9 in the peer group.

10 (5) Rates calculated on the basis of the most recent adjustment
11 information available to the department prior to the July 1
12 commencement of the new rate, regardless of whether the adjustments are
13 subject to pending administrative or judicial review, shall not be
14 adjusted to reflect future administrative or judicial rulings, whether
15 final or not. Only the particular rate under review shall be affected
16 by future rulings, if required to be amended, and the department shall
17 not recalculate a nursing facility's succeeding rate(s) based upon any
18 new adjusted cost information.

19 **Sec. 14.** RCW 74.46.530 and 1991 sp.s. c 8 s 17 are each amended to
20 read as follows:

21 (1) The department shall establish for ~~((individual facilities))~~
22 each medicaid nursing facility a return on investment ((allowances
23 composed of two parts: A financing allowance and a variable return
24 allowance)) prospective rate component as part of the facility's total
25 reimbursement, including profit potential, for services rendered to
26 medicaid residents.

27 ~~((a))~~ (2) The ~~((financing allowance))~~ return on investment
28 medicaid reimbursement rate component shall be determined by
29 multiplying the net invested funds of each facility by .10, and

1 dividing by the contractor's ~~((total))~~ allowable patient days from the
2 most recent cost report period. If a capitalized addition or
3 retirement of an asset will result in a different licensed bed capacity
4 during the ensuing period, the prior period total patient days used in
5 computing the ~~((financing and variable return allowances))~~ return on
6 investment rate shall be adjusted to the anticipated patient day level.

7 ~~((b))~~ (3) In computing the portion of net invested funds
8 representing the net book value of tangible fixed assets, the same
9 assets, depreciation bases, lives, and methods referred to in RCW
10 74.46.330, 74.46.350, 74.46.360, 74.46.370, and 74.46.380, including
11 owned and leased assets, shall be utilized, except that the capitalized
12 cost of land upon which the facility is located and such other
13 contiguous land which is reasonable and necessary for use in the
14 regular course of providing patient care shall also be included.
15 Subject to provisions and limitations contained in this chapter, for
16 land purchased by owners or lessors before July 18, 1984, capitalized
17 cost of land shall be the buyer's capitalized cost. For all partial or
18 whole rate periods after July 17, 1984, if the land is purchased after
19 July 17, 1984, capitalized cost shall be that of the owner of record on
20 July 17, 1984, or buyer's capitalized cost, whichever is lower. In the
21 case of leased facilities where the net invested funds are unknown or
22 the contractor is unable to provide necessary information to determine
23 net invested funds, the secretary shall have the authority to determine
24 an amount for net invested funds based on an appraisal conducted
25 according to RCW 74.46.360(1).

26 ~~((c) In determining the variable return allowance:~~

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

1 ~~(ii) The department shall then compute the variable return~~
2 ~~allowance by multiplying the appropriate percentage amounts, which~~
3 ~~shall not be less than one percent and not greater than four percent,~~
4 ~~by the total prospective rate for each facility, as determined in RCW~~
5 ~~74.46.450 through 74.46.510. The percentage amounts will be based on~~
6 ~~groupings of facilities according to the rankings as established in (i)~~
7 ~~of this subsection (1)(c). Those groups of facilities with lower per~~
8 ~~diem costs shall receive higher percentage amounts than those with~~
9 ~~higher per diem costs.~~

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

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

24 ~~((i))~~ (a) The ~~((financing allowance))~~ return on investment rate
25 shall be recomputed substituting the fair market value of the assets as
26 of January 1, 1982, as determined by the department of general
27 administration through an appraisal procedure, less accumulated
28 depreciation on the lessor's assets since January 1, 1982, for the net
29 book value of the assets in determining net invested funds for the
30 facility. A determination by the department of general administration

1 of fair market value shall be final unless the procedure used to make
2 such determination is shown to be arbitrary and capricious.

3 ~~((ii))~~ (b) The ~~((sum of the financing allowance))~~ return on
4 investment rate computed under subsections ~~((1)(e)(i))~~ (2) and (3) of
5 this section ~~((and the variable allowance))~~ shall be compared to the
6 annualized lease payment, plus any interest and depreciation
7 ~~((expenses))~~ associated with contractor-owned assets, for the period
8 covered by the prospective rates, divided by the contractor's total
9 patient days, minus the property cost center rate determined according
10 to RCW 74.46.510. The lesser of the two amounts shall be called the
11 alternate return on investment ~~((allowance))~~ rate.

12 ~~((iii))~~ (c) The return on investment ~~((allowance))~~ rate
13 determined according to subsections ~~((1)(d))~~ (2) and (3) of this
14 section or the alternate return on investment ~~((allowance))~~ rate,
15 whichever is greater, shall be the return on investment ~~((allowance))~~
16 rate for the facility ~~((and shall be added to the prospective rates of~~
17 ~~the contractor as determined in RCW 74.46.450 through 74.46.510))~~.

18 ~~((f))~~ (5) In the case of a facility which was leased by the
19 contractor as of January 1, 1980, in an arm's-length agreement, if the
20 lease is renewed or extended pursuant to a provision of the lease, the
21 treatment provided in subsection ~~((1)(e))~~ (4) of this section shall
22 be applied except that in the case of renewals or extensions made
23 subsequent to April 1, 1985, reimbursement for the annualized lease
24 payment shall be no greater than the reimbursement for the annualized
25 lease payment for the last year prior to the renewal or extension of
26 the lease.

27 ~~((2))~~ (6) In the event that the department of health and human
28 services disallows the application of the return on investment
29 ~~((allowances))~~ to nonprofit facilities, the department shall modify the
30 measurements of net invested funds used for computing individual

1 facility return on investment (~~((allowances))~~) rates as follows: Net
2 invested funds for each nonprofit facility shall be multiplied by one
3 minus the ratio of equity funds to the net invested funds of all
4 nonprofit facilities.

5 ~~((3))~~ (7) Each biennium, beginning in 1985, the secretary shall
6 review the adequacy of return on investment (~~((allowances))~~) rates in
7 relation to anticipated requirements for maintaining, reducing, or
8 expanding nursing care capacity. The secretary shall report the
9 results of such review to the legislature and make recommendations for
10 adjustments in the return on investment rates utilized in this section,
11 if appropriate.

12 **Sec. 15.** RCW 74.46.690 and 1985 c 361 s 3 are each amended to read
13 as follows:

14 (1) When a facility contract is terminated for any reason, the old
15 contractor shall submit final reports as required by RCW 74.46.040.

16 (2) Upon notification of a contract termination, the department
17 shall determine by preliminary or final settlement calculations the
18 amount of any overpayments made to the contractor, including
19 overpayments disputed by the contractor. If preliminary or final
20 settlements are unavailable for any period up to the date of contract
21 termination, the department shall make a reasonable estimate of any
22 overpayment or underpayments for such periods. The reasonable estimate
23 shall be based upon prior period settlements, available audit findings,
24 the projected impact of prospective rates, and other information
25 available to the department.

26 (3) The old contractor shall provide security, in a form deemed
27 adequate by the department, in the amount of determined and estimated
28 overpayments, whether or not the overpayments are the subject of good
29 faith dispute. Security shall consist of:

- 1 (a) Withheld payments due the contractor; or
2 (b) A surety bond issued by a bonding company acceptable to the
3 department; or
4 (c) An assignment of funds to the department; or
5 (d) Collateral acceptable to the department; or
6 (e) A purchaser's assumption of liability for the prior
7 contractor's overpayment; or
8 (f) Any combination of (a), (b), (c), (d), or (e) of this
9 subsection.

10 (4) A surety bond or assignment of funds shall:

11 (a) Be at least equal in amount to determined or estimated
12 overpayments, whether or not the subject of good faith dispute, minus
13 withheld payments;

14 (b) Be issued or accepted by a bonding company or financial
15 institution licensed to transact business in Washington state;

16 (c) Be for a term sufficient to ensure effectiveness after final
17 settlement and the exhaustion of administrative and judicial remedies:
18 PROVIDED, That the bond or assignment shall initially be for a term of
19 five years, and shall be forfeited if not renewed thereafter in an
20 amount equal to any remaining overpayment in dispute;

21 (d) Provide that the full amount of the bond or assignment, or
22 both, shall be paid to the department if a properly completed final
23 cost report is not filed in accordance with this chapter, or if
24 financial records supporting this report are not preserved and made
25 available to the auditor; and

26 (e) Provide that an amount equal to any recovery the department
27 determines is due from the contractor at settlement, but not exceeding
28 the amount of the bond and assignment, shall be paid to the department
29 if the contractor does not pay the refund within sixty days following

1 receipt of written demand or the conclusion of administrative or
2 judicial proceedings to contest settlement issues.

3 (5) The department shall release any payment withheld as security
4 if alternate security is provided under subsection (3) of this section
5 in an amount equivalent to determined and estimated overpayments.

6 (6) If the total of withheld payments, bonds, and assignments is
7 less than the total of determined and estimated overpayments, the
8 unsecured amount of such overpayments shall be a debt due the state and
9 shall become a lien against the real and personal property of the
10 contractor, and against the real and personal property of any
11 organization or entity related to the contractor as defined in this
12 chapter, from the time of filing by the department with the county
13 auditor of the county where the contractor resides or owns property,
14 and the lien claim has preference over the claims of all unsecured
15 creditors.

16 (7) The contractor shall file a properly completed final cost
17 report in accordance with the requirements of this chapter, which shall
18 be audited by the department. A final settlement shall be determined
19 within ninety days following completion of the audit process, including
20 any administrative review of the audit requested by the contractor.

21 (8) Following determination of settlement for all periods, security
22 held pursuant to this section shall be released to the contractor after
23 overpayments determined in connection with final settlement have been
24 paid by the contractor. If the contractor contests the settlement
25 determination in accordance with RCW 74.46.170, the department shall
26 hold the security, not to exceed the amount of estimated unrecovered
27 overpayments being contested, pending completion of the administrative
28 appeal process.

29 (9) If, after calculation of settlements for any periods, it is
30 determined that overpayments exist in excess of the value of security

1 held by the state, the department may seek recovery of these additional
2 overpayments as provided by law.

3 (10) If a contract is terminated solely in order for the same owner
4 to contract with the department to deliver services to another
5 classification of medical care recipients at the same facility, the
6 contractor is not required to submit final cost reports, and security
7 shall not be required.

8 NEW SECTION. **Sec. 16.** RCW 74.46.495 and 1983 1st ex.s. c 67 s
9 26 are each repealed.