
SUBSTITUTE SENATE BILL 5622

State of Washington**54th Legislature****1995 Regular Session**

By Senate Committee on Health & Long-Term Care (originally sponsored by Senators Rinehart, Wojahn, Fairley, Fraser and Kohl; by request of Department of Social and Health Services)

Read first time 03/06/95.

1 AN ACT Relating to long-term care; amending RCW 74.39A.007,
2 74.39A.010, 70.128.005, 70.128.007, 70.128.010, 70.128.057, 70.128.060,
3 70.128.070, 70.128.120, 70.128.040, 70.128.050, 70.128.055, 70.128.080,
4 70.128.090, 70.128.105, 70.128.110, 70.128.170, 70.128.130, 70.128.140,
5 70.128.150, 70.128.160, 70.128.175, 43.190.020, 43.190.060, 74.08.545,
6 74.08.550, 74.08.570, 74.09.520, 18.51.091, 18.51.140, 18.51.300,
7 74.42.020, 74.09.120, 11.40.010, 11.42.020, 11.62.010, 11.28.120,
8 18.39.250, 18.39.255, 68.46.050, 70.129.040, 43.20B.080, 74.46.020,
9 74.46.105, 74.46.115, 74.46.160, 74.46.170, 74.46.180, 74.46.370,
10 74.46.420, 74.46.430, 74.46.450, 74.46.460, 74.46.470, 74.46.481,
11 74.46.490, 74.46.500, 74.46.505, 74.46.510, 74.46.530, 74.46.560,
12 74.46.570, 74.46.640, 74.46.690, 74.46.770, 74.46.780, 74.46.010,
13 34.05.010, and 34.05.030; adding new sections to chapter 74.39A RCW;
14 adding new sections to chapter 70.128 RCW; adding new sections to
15 chapter 74.42 RCW; adding a new section to chapter 74.09 RCW; adding a
16 new section to chapter 74.46 RCW; creating new sections; recodifying
17 RCW 74.08.530, 74.08.560, 74.08.570, 74.08.545, and 74.08.550;
18 repealing RCW 70.128.180 and 74.08.541; prescribing penalties;
19 providing an effective date; and declaring an emergency.

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

1 NEW SECTION. **Sec. 1.** This act shall be known as the options in
2 long-term care act of 1995.

3 **Sec. 2.** RCW 74.39A.007 and 1993 c 508 s 2 are each amended to read
4 as follows:

5 It is the legislature's intent that:

6 (1) Home and community services, which generally are preferred by
7 consumers and usually more cost-effective than other long-term care
8 services, be greatly expanded and promoted;

9 (2) Consumers of long-term care services be informed of options
10 available to them;

11 (3) A system of continuous quality improvement be developed for
12 home and community services that will enhance the viability of such
13 services for a greater number of consumers, especially the more
14 vulnerable consumers, and lead to higher consumer confidence in and use
15 of such services;

16 (4) Long-term care services administered by the department of
17 social and health services include a balanced array of health, social,
18 and supportive services that promote individual choice, dignity,
19 privacy, and the highest practicable level of independence at home or
20 in home-like settings;

21 (~~(2)~~) (5) Home and community-based services be developed,
22 expanded, or maintained in order to meet the needs of consumers and to
23 maximize effective use of limited resources;

24 (~~(3)~~) (6) The involvement of registered nurses and other health
25 care professionals in community-based, long-term care settings be
26 expanded in order to increase the opportunities for citizens to receive
27 health and long-term care services in their homes and communities and
28 to enhance the quality of those services;

29 (7) Long-term care services be responsive and appropriate to
30 individual need and also cost-effective for the state;

31 (~~(4)~~) (8) Nursing home care is provided in such a manner and in
32 such an environment as will promote maintenance or enhancement of the
33 quality of life of each resident and timely discharge to a less
34 restrictive care setting when appropriate; (~~and~~

35 ~~(5)~~) (9) State health planning for nursing home bed supply take
36 into account increased availability of other home and community-based
37 service options;

1 (10) Nursing facility contracts be managed to reduce contracted
2 services as relative demand for them declines, to better control the
3 escalating costs of the service consistent with maintaining quality and
4 access, and to facilitate the integration of long-term care into health
5 care reform; and

6 (11) Individuals be financially responsible for their own long-term
7 care whenever possible, and therefore, public funds spent for such care
8 should be recovered from the estates of deceased clients to the extent
9 authorized by state and federal law.

10 NEW SECTION. Sec. 3. A new section is added to chapter 74.39A RCW
11 to read as follows:

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

14 (1) "Adult care home" means a facility licensed under chapter
15 70.128 RCW.

16 (2) "Adult residential care" means services provided by a facility
17 that has a contract with the department under section 8 of this act.

18 (3) "Aging and adult services administration" means the aging and
19 adult services administration of the department.

20 (4) "Assisted living services" means services provided by a
21 facility that has a contract with the department under RCW 74.39A.010.

22 (5) "Department" means the department of social and health
23 services.

24 (6) "Home and community services" means assisted living, adult
25 residential care, adult care homes, in-home services, and other
26 services administered by the aging and adult services administration of
27 the department directly or through contract with area agencies on
28 aging.

29 (7) "Long-term care services" means the services administered
30 directly or through contract by the aging and adult services
31 administration of the department, including but not limited to nursing
32 facility care and home and community services.

33 (8) "Nursing facility" means a nursing facility as defined in
34 section 1919(a) of the federal social security act and regulations
35 adopted thereunder.

36 (9) "Nursing home" means a facility licensed under chapter 18.51
37 RCW.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 74.39A RCW
2 to read as follows:

3 (1) To the extent of available funding, the department shall expand
4 cost-effective options for home and community services for consumers,
5 particularly for those consumers for whom the state participates in the
6 cost of their care.

7 (2) In expanding home and community services, the department shall
8 take full advantage of federal funding available under Title XVIII and
9 Title XIX of the federal social security act, including home health,
10 adult day care, waiver options, and state plan services. The
11 department is authorized to use funds available under its community
12 options program entry system waiver granted under section 1915(c) of
13 the federal social security act to expand the availability of in-home,
14 adult residential care, adult family home, and assisted living
15 services.

16 (3)(a) The department shall by rule establish payment rates for
17 home and community services that are cost-effective, based on client
18 need and service availability, and support the diversion and relocation
19 of clients from more expensive services.

20 (b) The department may authorize a supplemental assisted living
21 rate for up to two years for facilities that convert from nursing home
22 use and do not retain rights to the converted nursing home beds under
23 chapter 70.38 RCW, if the department determines that payment of a
24 supplemental rate is cost-effective and necessary to foster expansion
25 of contracted assisted living services.

26 NEW SECTION. **Sec. 5.** A new section is added to chapter 74.39A RCW
27 to read as follows:

28 The department shall have a system of quality improvement for long-
29 term care services guided by the following principles, consistent with
30 applicable federal laws and regulations:

31 (1) The system shall be consumer centered and promote privacy,
32 independence, dignity, choice, and a home or home-like environment for
33 consumers.

34 (2) The goal of the system is continuous quality improvement with
35 the focus on consumer satisfaction and outcomes for consumers.

36 (3) Providers should be supported in their efforts to improve
37 quality through training, technical assistance, and case management.

1 (4) The emphasis should be on problem prevention both in monitoring
2 and in screening potential providers of service.

3 (5) Monitoring should be outcome based and responsive to consumer
4 complaints.

5 (6) Providers generally should be assisted in addressing identified
6 problems initially through consultation and technical assistance.
7 Enforcement remedies shall be available for problems that are serious
8 or recurring, or that have been uncorrected.

9 NEW SECTION. **Sec. 6.** A new section is added to chapter 74.39A RCW
10 to read as follows:

11 (1) The aging and adult services administration of the department
12 shall establish and maintain a toll-free telephone number for receiving
13 complaints regarding a facility that the administration licenses or
14 with which it contracts for long-term care services.

15 (2) All facilities that are licensed by, or that contract with the
16 aging and adult services administration to provide long-term care
17 services shall post in a place and manner clearly visible to residents
18 and visitors the department's toll-free complaint telephone number.

19 (3) The aging and adult services administration shall investigate
20 complaints if the subject of the complaint is within its authority
21 unless the department determines that: (a) The complaint is intended
22 to willfully harass a licensee or employee of the licensee; (b) there
23 is no reasonable basis for investigation; or (c) corrective action has
24 been taken.

25 (4) The aging and adult services administration shall refer
26 complaints to appropriate state agencies, law enforcement agencies, the
27 attorney general, the long-term care ombudsman, or other entities if
28 the department lacks authority to investigate or elects to coordinate
29 the investigation with other entities.

30 (5) The department may not provide the substance of the complaint
31 to the licensee or contractor before the completion of the
32 investigation by the department. Neither the substance of the
33 complaint provided to the licensee or contractor nor any copy of the
34 complaint or related report published, released, or made otherwise
35 available shall disclose the name, title, or identity of any
36 complainant, or other person mentioned in the complaint, except that
37 the department may disclose the identity of the complainant if such
38 disclosure is requested in writing by the complainant.

1 (6) A facility that provides long-term care services shall not
2 discriminate or retaliate in any manner against a resident on the basis
3 or for the reason that such resident or any other person made a
4 complaint to the department or the long-term care ombudsman or
5 cooperated with the investigation of such a complaint. The department
6 shall impose a civil penalty of not more than three thousand dollars
7 for a violation of this subsection and require the facility to mitigate
8 any damages incurred by a resident.

9 **Sec. 7.** RCW 74.39A.010 and 1993 c 508 s 3 are each amended to read
10 as follows:

11 (1) To the extent of available funding, the department of social
12 and health services may contract ((with licensed boarding homes)) for
13 assisted living services. The department shall ((develop)) adopt rules
14 for facilities that contract with the department for assisted living to
15 establish:

16 (a) Facility service standards consistent with the principles in
17 section 5 of this act and consistent with chapter 70.129 RCW;

18 (b) Standards for resident living areas that require private,
19 apartment-like units;

20 (c) Training requirements for providers and their staff.

21 (2) The department's rules shall provide that ((ensure that the
22 contracted)) services in assisted living facilities:

23 ((+1)) (a) Recognize individual needs, privacy, and autonomy;

24 ((+2)) (b) Include, but not be limited to, personal care, nursing
25 services, medication administration, and supportive services that
26 promote independence and self-sufficiency;

27 ((+3)) (c) Are of sufficient scope to assure that each resident
28 who chooses to remain in assisted living may do so, unless nursing care
29 needs exceed the level of care defined by the department;

30 ((+4)) (d) Are directed first to those persons most likely, in the
31 absence of assisted living services, to need hospital, nursing
32 facility, or other out-of-home placement; and

33 ((+5)) (e) Are provided in compliance with applicable ((department
34 of health)) facility and professional licensing laws and rules.

35 NEW SECTION. Sec. 8. A new section is added to chapter 74.39A RCW
36 to read as follows:

1 (1) To the extent of available funding, the department of social
2 and health services may contract for adult residential care.

3 (2) The department shall adopt rules for facilities that contract
4 with the department for adult residential care to establish:

5 (a) Facility service standards consistent with the principles in
6 section 5 of this act and consistent with chapter 70.129 RCW;

7 (b) Training requirements for providers and their staff;

8 (c) Levels of adult residential care based on the education,
9 training, and experience of the provider or staff.

10 (3) The department's rules shall provide that services in adult
11 residential care facilities:

12 (a) Recognize individual needs, privacy, and autonomy;

13 (b) Include personal care services and may include other services
14 that promote independence and self-sufficiency and aging in place;

15 (c) Are directed first to those persons most likely, in the absence
16 of adult residential care services, to need hospital, nursing facility,
17 or other out-of-home placement; and

18 (d) Are provided in compliance with applicable facility and
19 professional licensing laws and rules.

20 NEW SECTION. **Sec. 9.** A new section is added to chapter 74.39A RCW
21 to read as follows:

22 (1) The department shall establish by rule reasonable minimum
23 qualifications and training requirements to assure that assisted living
24 and adult residential care providers with which the department
25 contracts are capable of providing services consistent with this
26 chapter and rules adopted under this chapter.

27 (2) The department shall not contract for assisted living or adult
28 residential care services with a provider if the department finds that
29 the provider or any partner, officer, director, managerial employee, or
30 owner of five percent or more of the provider has a history of
31 significant noncompliance with federal or state regulations, rules, or
32 laws in providing care or services to vulnerable adults or to children.

33 NEW SECTION. **Sec. 10.** A new section is added to chapter 74.39A
34 RCW to read as follows:

35 (1) In any case in which the department finds that an assisted
36 living or adult residential care provider, or any partner, officer,
37 director, owner of five percent or more of the assets of the provider

1 entity, or managing employee failed or refused to comply with this
2 chapter or chapter 70.129 RCW, or the standards, rules, and regulations
3 established under them, the department may take any or all of the
4 following actions:

5 (a) Impose reasonable conditions for continuation of the contract,
6 such as correction within a specified time, training, and limits on the
7 type of clients the provider may admit or serve;

8 (b) Assess civil monetary penalties of not more than five hundred
9 dollars per day per violation;

10 (c) Order stop placement;

11 (d) Suspend, revoke, or refuse to renew a contract.

12 (2) When the department orders stop placement, the facility shall
13 not admit any person eligible to receive long-term care services until
14 the stop placement order is terminated. The department may approve
15 readmission of a resident to the facility from a hospital or nursing
16 home during the stop placement. The department shall terminate the
17 stop placement when: (a) The violations necessitating the stop
18 placement have been corrected; and (b) the provider exhibits the
19 capacity to maintain adequate care and service.

20 (3) The department may adopt any rules necessary to implement this
21 section, consistent with the principals set forth in section 5 of this
22 act.

23 (4) Chapter 34.05 RCW applies to department actions under this
24 section, except that orders of the department imposing contract
25 suspension, stop placement, or conditions for continuation of a
26 contract are effective immediately upon notice and pending any hearing.

27 **Sec. 11.** RCW 70.128.005 and 1989 c 427 s 14 are each amended to
28 read as follows:

29 The legislature finds that:

30 (1) Adult ((family)) care homes are an important part of the
31 state's long-term care system. Adult ((family)) care homes provide an
32 alternative to institutional care and promote a high degree of
33 independent living for residents;

34 (2) Persons with functional limitations have broadly varying
35 service needs. Adult care homes that can meet those needs are an
36 essential component of a long-term system;

1 (3) The development and operation of adult care homes that can
2 provide quality personal care and special care services should be
3 encouraged.

4 **Sec. 12.** RCW 70.128.007 and 1989 c 427 s 15 are each amended to
5 read as follows:

6 The purposes of this chapter are to:

7 (1) Encourage the establishment and maintenance of adult ((family))
8 care homes that provide a humane, safe, and homelike environment for
9 persons with functional limitations who need personal and special care;

10 (2) Establish standards for regulating adult ((family)) care homes
11 that adequately protect residents(~~(, but are consistent with the~~
12 abilities and resources of an adult family home so as not to discourage
13 individuals from serving as adult family home providers; and));

14 (3) Encourage consumers, families, providers, and the public to
15 become active in assuring their full participation in development of
16 adult ((family)) care homes that provide high quality care;

17 (4) Provide for appropriate care of residents in adult care homes;
18 and

19 (5) Accord each resident the right to participate in the
20 development of the care plan and in other major decisions involving the
21 resident and his or her care.

22 **Sec. 13.** RCW 70.128.010 and 1989 c 427 s 16 are each amended to
23 read as follows:

24 Unless the context clearly requires otherwise, the definitions in
25 this section apply throughout this chapter.

26 (1) "Adult ((family)) care home" means a regular family abode
27 ((of)) in which a person or persons ((~~who are providing~~)) provides
28 personal care, special care, room, and board to more than one but not
29 more than ((four)) six adults who are not related by blood or marriage
30 to the person or persons providing the services(~~(; except that a~~
31 maximum of six adults may be permitted if the department determines
32 that the home is of adequate size and that the home and the provider
33 are capable of meeting standards and qualifications as provided for in
34 this act)).

35 (2) "Provider" means any person who is licensed under this chapter
36 to operate an adult ((family)) care home. The provider shall reside at
37 the adult ((family)) care home(~~(, except that))~~. Exceptions may be

1 authorized by the department (~~((for good cause,))~~) through standards as
2 defined in rule.

3 (3) "Department" means the department of social and health
4 services.

5 (4) "Resident" means an adult in need of personal or special care
6 in an adult (~~((family))~~) care home who is not related to the provider.

7 (5) "Adults" means persons who have attained the age of eighteen
8 years.

9 (6) "Home" means an adult (~~((family))~~) care home.

10 (7) "Imminent danger" means serious physical harm to or death of a
11 resident has occurred, or there is a serious threat to resident life,
12 health, or safety.

13 (8) "Special care" means care beyond personal care as defined by
14 the department, in rule.

15 (9) "Capacity" means the maximum number of persons in need of
16 personal or special care permitted in an adult care home at a given
17 time. This number shall include related children or adults living in
18 the home and who receive full-time care.

19 **Sec. 14.** RCW 70.128.057 and 1991 c 40 s 2 are each amended to read
20 as follows:

21 Notwithstanding the existence or use of any other remedy, the
22 department may, in the manner provided by law, upon the advice of the
23 attorney general who shall represent the department in the proceedings,
24 maintain an action in the name of the state for an injunction, civil
25 penalty, or other process against a person to restrain or prevent the
26 operation or maintenance of an adult (~~((family))~~) care home without a
27 license under this chapter.

28 NEW SECTION. **Sec. 15.** A new section is added to chapter 70.128
29 RCW to read as follows:

30 The legislature finds that the operation of an adult care home
31 without a license in violation of this chapter is a matter vitally
32 affecting the public interest for the purpose of applying the consumer
33 protection act, chapter 19.86 RCW. Operation of an adult care home
34 without a license in violation of this chapter is not reasonable in
35 relation to the development and preservation of business. Such a
36 violation is an unfair or deceptive act in trade or commerce and an

1 unfair method of competition for the purpose of applying the consumer
2 protection act, chapter 19.86 RCW.

3 **Sec. 16.** RCW 70.128.060 and 1989 c 427 s 20 are each amended to
4 read as follows:

5 (1) An application for license shall be made to the department upon
6 forms provided by it and shall contain such information as the
7 department reasonably requires.

8 (2) The department shall issue a license to an adult (~~family~~)
9 care home if the department finds that the applicant and the home are
10 in compliance with this chapter and the rules adopted under this
11 chapter; and that the applicant has no prior violations of this chapter
12 relating to the adult (~~family~~) care home subject to the application
13 or any other adult (~~family~~) care home, or of any other law regulating
14 residential care facilities within the past five years that resulted in
15 revocation or nonrenewal of a license.

16 (3) The department shall not issue a license to a provider if the
17 department finds that the provider or any partner, officer, director,
18 managerial employee, or owner of five percent or more of the provider
19 has a history of significant noncompliance with federal or state
20 regulations, rules, or laws in providing care or services to vulnerable
21 adults or to children.

22 (4) The license fee shall be submitted with the application.

23 ~~((4))~~ (5) The department shall license an adult care home for the
24 maximum level of care that the adult care home may provide. The
25 department shall define, in rule, license levels based upon the
26 education, training, and caregiving experience of the licensed provider
27 or staff.

28 (6) The department shall serve upon the applicant a copy of the
29 decision granting or denying an application for a license. An
30 applicant shall have the right to contest denial of his or her
31 application for a license as provided in chapter 34.05 RCW by
32 requesting a hearing in writing within (~~ten~~) twenty-eight days after
33 receipt of the notice of denial.

34 ~~((5) A provider shall not be licensed for more than one adult~~
35 ~~family home. Exceptions may be authorized by the department for good~~
36 ~~cause, as defined in rule. The department shall submit to appropriate~~
37 ~~committees of the legislature, by December 1, 1991, a report on the~~
38 ~~number and type of good cause exceptions granted.~~

1 ~~(6))~~ (7) The department shall establish, by rule, standards used
2 to license nonresident providers and multiple facility operators.

3 (8) The license fee shall be set at fifty dollars per year for each
4 home. A fifty dollar processing fee shall also be charged each home
5 when the home is initially licensed.

6 **Sec. 17.** RCW 70.128.070 and 1989 c 427 s 22 are each amended to
7 read as follows:

8 (1) A license shall be valid for one year.

9 (2) At least ~~((ninety))~~ sixty days prior to expiration of the
10 license, the provider shall submit an application for renewal of a
11 license. The department shall send the provider an application for
12 renewal prior to this time. The department shall have the authority to
13 investigate any information included in the application for renewal of
14 a license.

15 (3)(a) Homes applying for a license shall be inspected at the time
16 of licensure.

17 (b) Homes licensed by the department shall be inspected at least
18 every eighteen months, subject to available funds.

19 (c) ~~((Licensed homes where a complaint has been received by the~~
20 ~~department may be inspected at any time.))~~ The department may make an
21 unannounced inspection of a licensed home at any time to assure that
22 the home and provider are in compliance with this chapter and the rules
23 adopted under this chapter.

24 (4) If the department finds that the home is not in compliance with
25 this chapter, it shall require the home to correct any violations as
26 provided in this chapter. If the department finds that the home is in
27 compliance with this chapter and the rules adopted under this chapter,
28 the department shall renew the license of the home.

29 **Sec. 18.** RCW 70.128.120 and 1989 c 427 s 24 are each amended to
30 read as follows:

31 An adult ~~((family))~~ care home provider shall have the following
32 minimum qualifications:

33 (1) Twenty-one years of age or older;

34 (2) Good moral and responsible character and reputation;

35 (3) Literacy; ~~((and))~~

36 (4) Management and administrative ability to carry out the
37 requirements of this chapter;

1 (5) Satisfactory completion of department-approved initial training
2 and continuing education training as specified by the department in
3 rule;

4 (6) Satisfactory completion of department-approved, or equivalent,
5 special care training before a provider may provide special care
6 services to a resident; and

7 (7) Not been convicted of any crime listed in RCW 43.43.830 and
8 43.43.842.

9 **Sec. 19.** RCW 70.128.040 and 1989 c 427 s 18 are each amended to
10 read as follows:

11 (1) The department shall adopt rules and standards with respect to
12 all adult ((family)) care homes and the operators thereof to be
13 licensed under this chapter to carry out the purposes and requirements
14 of this chapter. In developing rules and standards the department
15 shall recognize the residential family-like nature of adult ((family))
16 care homes and not develop rules and standards which by their
17 complexity serve as an overly restrictive barrier to the development of
18 the adult ((family)) care homes in the state. Procedures and forms
19 established by the department shall be developed so they are easy to
20 understand and comply with. Paper work requirements shall be minimal.
21 Easy to understand materials shall be developed for homes explaining
22 licensure requirements and procedures.

23 (2) During the initial stages of development of proposed rules, the
24 department shall provide notice of development of the rules to
25 organizations representing adult ((family)) care homes and their
26 residents, and other groups that the department finds appropriate. The
27 notice shall state the subject of the rules under consideration and
28 solicit written recommendations regarding their form and content.

29 (3) Except where provided otherwise, chapter 34.05 RCW shall govern
30 all department rule-making and adjudicative activities under this
31 chapter.

32 **Sec. 20.** RCW 70.128.050 and 1989 c 427 s 19 are each amended to
33 read as follows:

34 After July 1, 1990, no person shall operate or maintain an adult
35 ((family)) care home in this state without a license under this
36 chapter.

1 **Sec. 21.** RCW 70.128.055 and 1991 c 40 s 1 are each amended to read
2 as follows:

3 A person operating or maintaining an adult ((family)) care home
4 without a license under this chapter is guilty of a misdemeanor. Each
5 day of a continuing violation after conviction is considered a separate
6 offense.

7 **Sec. 22.** RCW 70.128.080 and 1989 c 427 s 21 are each amended to
8 read as follows:

9 An adult ((family)) care home shall have readily available for
10 review by the department, residents, and the public:

11 (1) Its license to operate; and

12 (2) A copy of each inspection report received by the home from the
13 department for the past three years.

14 **Sec. 23.** RCW 70.128.090 and 1989 c 427 s 30 are each amended to
15 read as follows:

16 (1) During inspections of an adult ((family)) care home, the
17 department shall have access and authority to examine areas and
18 articles in the home used to provide care or support to residents,
19 including residents' records, accounts, and the physical premises,
20 including the buildings, grounds, and equipment. The department also
21 shall have the authority to interview the provider and residents of an
22 adult ((family)) care home.

23 (2) Whenever an inspection is conducted, the department shall
24 prepare a written report that summarizes all information obtained
25 during the inspection, and if the home is in violation of this chapter,
26 serve a copy of the inspection report upon the provider at the same
27 time as a notice of violation. If the home is not in violation of this
28 chapter, a copy of the inspection report shall be mailed to the
29 provider within ten days of the inspection of the home. All inspection
30 reports shall be made available to the public at the department during
31 business hours.

32 ~~(3) ((The inspection report shall describe any corrective measures~~
33 ~~on the part of the provider necessary to pass a reinspection. If the~~
34 ~~department finds upon reinspection of the home that the corrective~~
35 ~~measures have been satisfactorily implemented, the department shall~~
36 ~~cease any actions taken against the home. Nothing in this section~~
37 ~~shall require the department to license or renew the license of a home~~

1 ~~where serious physical harm or death has occurred to a resident))~~ The
2 provider shall develop corrective measures for any violations found by
3 the department's inspection. The department may provide consultation
4 and technical assistance to assist the provider in developing effective
5 corrective measures. The department shall include a statement of the
6 provider's corrective measures in the department's inspection report.

7 **Sec. 24.** RCW 70.128.105 and 1991 c 40 s 3 are each amended to read
8 as follows:

9 The department may commence an action in superior court to enjoin
10 the operation of an adult ((family)) care home if it finds that
11 conditions there constitute an imminent danger to residents.

12 **Sec. 25.** RCW 70.128.110 and 1989 c 427 s 23 are each amended to
13 read as follows:

14 (1) No public agency contractor or employee shall place, refer, or
15 recommend placement of a person into an adult ((family)) care home that
16 is operating without a license.

17 (2) Any public agency contractor or employee who knows that an
18 adult ((family)) care home is operating without a license shall report
19 the name and address of the home to the department. The department
20 shall investigate any report filed under this section.

21 **Sec. 26.** RCW 70.128.170 and 1989 c 427 s 33 are each amended to
22 read as follows:

23 Nothing in this chapter or the rules adopted under it may be
24 construed as authorizing the supervision, regulation, or control of the
25 remedial care or treatment of residents in any adult ((family)) care
26 home conducted by and for the adherents of a church or religious
27 denomination who rely upon spiritual means alone through prayer for
28 healing in accordance with the tenets and practices of such church or
29 religious denomination and the bona fide religious beliefs genuinely
30 held by such adherents.

31 NEW SECTION. **Sec. 27.** A new section is added to chapter 70.128
32 RCW to read as follows:

33 The legislature recognizes that adult care homes located within the
34 boundaries of a federally recognized Indian reservation may be licensed
35 by the Indian tribe. The department may pay for care for persons

1 residing in such homes, if there has been a tribal or state criminal
2 background check of the provider and any staff, and the client is
3 otherwise eligible for services administered by the department.

4 **Sec. 28.** RCW 70.128.130 and 1989 c 427 s 26 are each amended to
5 read as follows:

6 (1) Providers must own, rent, or lease the home to be licensed.
7 Exceptions may be granted by the department to churches, hospitals,
8 nonprofit associations, or similar organizations.

9 (2) Adult ((family)) care homes shall be maintained internally and
10 externally in good repair and condition. Such homes shall have safe
11 and functioning systems for heating, cooling, hot and cold water,
12 electricity, plumbing, garbage disposal, sewage, cooking, laundry,
13 artificial and natural light, ventilation, and any other feature of the
14 home.

15 ((+2)) (3) Adult ((family)) care homes shall be maintained in a
16 clean and sanitary manner, including proper sewage disposal, food
17 handling, and hygiene practices.

18 ((+3)) (4) Adult ((family)) care homes shall develop a fire drill
19 plan for emergency evacuation of residents, shall have smoke detectors
20 in each bedroom where a resident is located, shall have fire
21 extinguishers on each floor of the home, and shall not keep
22 nonambulatory patients above the first floor of the home.

23 ((+4)) (5) Adult ((family)) care homes shall have clean,
24 functioning, and safe household items and furnishings.

25 ((+5)) (6) Adult ((family)) care homes shall provide a nutritious
26 and balanced diet and shall recognize residents' needs for special
27 diets.

28 ((+6)) (7) Adult care home providers shall ensure that all
29 residents receive care consistent with the resident's plan of care.

30 (8) Adult ((family)) care homes shall establish health care
31 procedures for the care of residents including medication
32 administration and emergency medical care.

33 (a) Adult ((family)) care home residents shall be permitted to
34 self-administer medications.

35 (b) Adult ((family)) care home providers may administer medications
36 and deliver special care only to the extent ~~((that the provider is a~~
37 ~~licensed health care professional for whom the administration of~~

1 ~~medications is within the scope of practice under Washington))~~
2 authorized by law.

3 (9) A provider will ensure that any volunteer, student, employee,
4 or person residing within the adult care home who will have
5 unsupervised access to any resident shall not have been convicted of a
6 crime listed under RCW 43.43.830 or 43.43.842. Except that a person
7 may be conditionally employed pending the completion of a criminal
8 conviction background inquiry.

9 (10) A provider shall offer activities to residents under care as
10 defined by the department in rule.

11 (11) An adult care home provider shall ensure that staff are
12 competent and receive necessary training to perform assigned tasks.

13 **Sec. 29.** RCW 70.128.140 and 1989 c 427 s 27 are each amended to
14 read as follows:

15 Each adult ((family)) care home shall meet applicable local
16 licensing, zoning, building, and housing codes, and state and local
17 fire safety regulations as they pertain to a single-family residence.
18 It is the responsibility of the home to check with local authorities to
19 ensure all local codes are met.

20 **Sec. 30.** RCW 70.128.150 and 1989 c 427 s 28 are each amended to
21 read as follows:

22 Whenever possible adult ((family)) care homes are encouraged to
23 contact and work with local quality assurance projects such as the
24 volunteer ombudsman with the goal of assuring high quality care is
25 provided in the home.

26 An adult care home may not willfully interfere with a
27 representative of the long-term care ombudsman program in the
28 performance of official duties. The department shall impose a penalty
29 of not more than three thousand dollars for any such willful
30 interference.

31 **Sec. 31.** RCW 70.128.160 and 1989 c 427 s 31 are each amended to
32 read as follows:

33 (1) The department is authorized to take one or more of the actions
34 listed in subsection (2) of this section in any case in which the
35 department finds that an adult ((family)) care home provider has:

1 (a) Failed or refused to comply with the requirements of this
2 chapter or the rules adopted under this chapter;

3 (b) Operated an adult (~~(family)~~) care home without a license or
4 under a revoked license;

5 (c) Knowingly or with reason to know made a false statement of
6 material fact on his or her application for license or any data
7 attached thereto, or in any matter under investigation by the
8 department; or

9 (d) Willfully prevented or interfered with any inspection or
10 investigation by the department.

11 (2) When authorized by subsection (1) of this section, the
12 department may take one or more of the following actions:

13 (a) Refuse to issue a license;

14 (b) Impose reasonable conditions on a license, such as correction
15 within a specified time, training, and limits on the type of clients
16 the provider may admit or serve;

17 (c) Impose civil penalties of not more than five hundred dollars
18 per day per violation;

19 (d) Suspend, revoke, or refuse to renew a license; or

20 (~~(e)~~) (e) Suspend admissions to the adult (~~(family)~~) care home by
21 imposing stop placement.

22 (3) When the department orders stop placement, the facility shall
23 not admit any person until the stop placement order is terminated. The
24 department may approve readmission of a resident to the facility from
25 a hospital or nursing home during the stop placement. The department
26 shall terminate the stop placement when: (a) The violations
27 necessitating the stop placement have been corrected; and (b) the
28 provider exhibits the capacity to maintain adequate care and service.

29 (4) Chapter 34.05 RCW applies to department actions under this
30 section, except that orders of the department imposing license
31 suspension, stop placement, or conditions for continuation of a license
32 are effective immediately upon notice and pending any hearing.

33 **Sec. 32.** RCW 70.128.175 and 1989 1st ex.s. c 9 s 815 are each
34 amended to read as follows:

35 (1) Unless the context clearly requires otherwise, these
36 definitions shall apply throughout this section and RCW 35.63.140,
37 35A.63.149, 36.70.755, 35.22.680, 36.32.560, and 70.128.180:

1 (a) "Adult ((family)) care home" means a ((~~facility licensed~~
2 ~~pursuant to chapter 70.128 RCW or the~~)) regular family abode of a
3 person or persons ((~~who are~~)) providing personal care, special care,
4 room, and board to more than one but not more than six adults who are
5 not related by blood or marriage to the person or persons providing the
6 services.

7 (b) "Residential care facility" means a facility that cares for at
8 least five, but not more than fifteen functionally disabled persons,
9 that is not licensed pursuant to chapter 70.128 RCW.

10 (c) "Department" means the department of social and health
11 services.

12 (2) An adult ((family)) care home shall be considered a residential
13 use of property for zoning purposes. Adult ((family)) care homes shall
14 be a permitted use in all areas zoned for residential or commercial
15 purposes, including areas zoned for single family dwellings.

16 NEW SECTION. Sec. 33. A new section is added to chapter 70.128
17 RCW to read as follows:

18 (1) The department shall maintain a toll-free telephone number for
19 receiving complaints regarding adult care homes, as provided in section
20 6 of this act.

21 (2) An adult care home shall post in a place and manner clearly
22 visible to residents and visitors the department's toll-free complaint
23 telephone number.

24 (3) No adult care home shall discriminate or retaliate in any
25 manner against a resident on the basis or for the reason that such
26 resident or any other person made a complaint to the department or the
27 long-term care ombudsman or cooperated with the investigation of such
28 a complaint. The department shall impose a civil penalty of not more
29 than three thousand dollars for a violation of this subsection and
30 require the provider to mitigate any damages incurred by a resident.

31 NEW SECTION. Sec. 34. RCW 70.128.180 and 1989 c 427 s 41 are each
32 repealed.

33 **Sec. 35.** RCW 43.190.020 and 1991 sp.s. c 8 s 3 are each amended to
34 read as follows:

1 As used in this chapter, "long-term care facility" means any of the
2 following (~~which provide services to persons sixty years of age and~~
3 ~~older and is~~):

4 (1) A facility which:

5 (a) Maintains and operates twenty-four hour skilled nursing
6 services for the care and treatment of chronically ill or convalescent
7 patients, including mental, emotional, or behavioral problems, mental
8 retardation, or alcoholism;

9 (b) Provides supportive, restorative, and preventive health
10 services in conjunction with a socially oriented program to its
11 residents, and which maintains and operates twenty-four hour services
12 including board, room, personal care, and intermittent nursing care.
13 "Long-term health care facility" includes nursing homes and nursing
14 facilities, but does not include acute care hospital or other licensed
15 facilities except for that distinct part of the hospital or facility
16 which provides nursing facility services.

17 (2) Any family home, group care facility, or similar facility
18 determined by the secretary, for twenty-four hour nonmedical care of
19 persons in need of personal services, supervision, or assistance
20 essential for sustaining the activities of daily living or for the
21 protection of the individual.

22 (3) Any swing bed in an acute care facility.

23 **Sec. 36.** RCW 43.190.060 and 1987 c 158 s 3 are each amended to
24 read as follows:

25 A long-term care ombudsman shall:

26 (1) Investigate and resolve complaints made by or on behalf of
27 (~~elder individuals who are~~) residents of long-term care facilities
28 relating to administrative action which may adversely affect the
29 health, safety, welfare, and rights of these individuals;

30 (2) Monitor the development and implementation of federal, state,
31 and local laws, rules, regulations, and policies with respect to long-
32 term care facilities in this state;

33 (3) Provide information as appropriate to public agencies regarding
34 the problems of individuals residing in long-term care facilities; and

35 (4) Provide for training volunteers and promoting the development
36 of citizen organizations to participate in the ombudsman program. A
37 volunteer long-term care ombudsman shall be able to identify and
38 resolve problems regarding the care of residents in long-term care

1 facilities and to assist such residents in the assertion of their civil
2 and human rights. However, volunteers shall not be used for complaint
3 investigations but may engage in fact-finding activities to determine
4 whether a formal complaint should be submitted to the department.

5 NEW SECTION. **Sec. 37.** RCW 74.08.530, 74.08.560, 74.08.570,
6 74.08.545, and 74.08.550 are each recodified in chapter 74.39A RCW.

7 NEW SECTION. **Sec. 38.** RCW 74.08.541 and 1989 c 427 s 4, 1986 c
8 222 s 1, 1983 1st ex.s. c 41 s 39, & 1981 1st ex.s. c 6 s 17 are each
9 repealed.

10 **Sec. 39.** RCW 74.08.545 and 1989 c 427 s 5 are each amended to read
11 as follows:

12 It is the intent of the legislature that chore services be provided
13 to eligible persons within the limits of funds appropriated for that
14 purpose. Therefore, the department shall provide services only to
15 those persons identified as at risk of being placed in a long-term care
16 facility in the absence of such services. The department shall not
17 provide chore services to any individual who is eligible for, and whose
18 needs can be met by another community service administered by the
19 department. Chore services shall be provided to the extent necessary
20 to maintain a safe and healthful living environment. It is the policy
21 of the state to encourage the development of volunteer chore services
22 in local communities as a means of meeting chore care service needs and
23 directing financial resources. In determining eligibility for chore
24 services, the department shall consider the following:

25 (1) The kind of services needed;

26 (2) The degree of service need, and the extent to which an
27 individual is dependent upon such services to remain in his or her home
28 or return to his or her home;

29 (3) The availability of personal or community resources which may
30 be utilized to meet the individual's need; and

31 (4) Such other factors as the department considers necessary to
32 insure service is provided only to those persons whose chore service
33 needs cannot be met by relatives, friends, nonprofit organizations,
34 ~~((or))~~ other persons, or by other programs or resources.

35 In determining the level of services to be provided under this
36 chapter, ~~((the))~~ the client shall be assessed using an instrument

1 designed by the department to determine the level of functional
2 disability, the need for service and the person's risk of long-term
3 care facility placement.

4 NEW SECTION. **Sec. 40.** A new section is added to chapter 74.39A
5 RCW to read as follows:

6 (1) The department shall establish a monthly dollar lid for each
7 region on chore services expenditures within the legislative
8 appropriation. Priority for services shall be given to:

9 (a) People who were receiving chore personal care services as of
10 June 30, 1995;

11 (b) People for whom chore personal care services are necessary to
12 return to the community from a nursing home;

13 (c) People for whom chore personal care services are necessary to
14 prevent unnecessary nursing home placement; and

15 (d) People for whom chore personal care services are necessary as
16 a protective measure based on referrals resulting from an adult
17 protective services investigation.

18 (2) The department shall require a client to participate in the
19 cost of chore services as a necessary precondition to receiving chore
20 services paid for by the state. The client shall retain an amount
21 equal to one hundred percent of the federal poverty level, adjusted for
22 household size, for maintenance needs. The department shall consider
23 the remaining income as the client participation amount for chore
24 services except for those persons whose participation is established
25 under section 42 of this act.

26 (3) The department shall establish, by rule, the maximum amount of
27 resources a person may retain and be eligible for chore services.

28 **Sec. 41.** RCW 74.08.550 and 1989 c 427 s 6 are each amended to read
29 as follows:

30 (1) The department is authorized to develop a program to provide
31 for ~~((those))~~ chore services ~~((enumerated in RCW 74.08.541))~~ under this
32 chapter.

33 (2) The department may provide assistance in the recruiting of
34 providers of the services enumerated in ~~((RCW 74.08.541))~~ section 40 of
35 this act and seek to assure the timely provision of services in
36 emergency situations.

1 (3) The department shall assure that all providers of the chore
2 services (~~enumerated in RCW 74.08.541~~) under this chapter are
3 compensated for the delivery of the services on a prompt and regular
4 basis.

5 **Sec. 42.** RCW 74.08.570 and 1989 c 427 s 7 are each amended to read
6 as follows:

7 (1) An otherwise eligible disabled person shall not be deemed
8 ineligible for chore services under this chapter if the person's gross
9 income from employment, adjusted downward by the cost of the chore
10 services to be provided and the disabled person's work expenses, does
11 not exceed the maximum eligibility standard established by the
12 department for such chore services. The department shall establish a
13 (~~sliding scale fee schedule for~~) methodology for client participation
14 that allows such disabled persons(~~(, taking into consideration the~~
15 ~~person's ability to pay and work expenses)~~) to be employed.

16 (2) If a disabled person arranges for chore services through an
17 individual provider arrangement, the client's contribution shall be
18 counted as first dollar toward the total amount owed to the provider
19 for chore services rendered.

20 (3) As used in this section:

21 (a) "Gross income" means total earned wages, commissions, salary,
22 and any bonus;

23 (b) "Work expenses" includes:

24 (i) Payroll deductions required by law or as a condition of
25 employment, in amounts actually withheld;

26 (ii) The necessary cost of transportation to and from the place of
27 employment by the most economical means, except rental cars; and

28 (iii) Expenses of employment necessary for continued employment,
29 such as tools, materials, union dues, transportation to service
30 customers if not furnished by the employer, and uniforms and clothing
31 needed on the job and not suitable for wear away from the job;

32 (c) "Employment" means any work activity for which a recipient
33 receives monetary compensation;

34 (d) "Disabled" means:

35 (i) Permanently and totally disabled as defined by the department
36 and as such definition is approved by the federal social security
37 administration for federal matching funds;

38 (ii) Eighteen years of age or older;

1 (iii) A resident of the state of Washington; and
2 (iv) Willing to submit to such examinations as are deemed necessary
3 by the department to establish the extent and nature of the disability.

4 NEW SECTION. **Sec. 43.** A new section is added to chapter 74.39A
5 RCW to read as follows:

6 The department shall contract with area agencies on aging:

7 (1) To provide case management services to individuals receiving
8 long-term care services in their own home; and

9 (2) To reassess and reauthorize long-term care services in home or
10 in other settings for individuals:

11 (a) Who have been initially authorized by the department to receive
12 long-term care services; and

13 (b) Who, at the time of reassessment and reauthorization, are
14 receiving long-term care services in their own home.

15 **Sec. 44.** RCW 74.09.520 and 1994 c 21 s 4 are each amended to read
16 as follows:

17 (1) The term "medical assistance" may include the following care
18 and services: (a) Inpatient hospital services; (b) outpatient hospital
19 services; (c) other laboratory and x-ray services; (d) nursing facility
20 services; (e) physicians' services, which shall include prescribed
21 medication and instruction on birth control devices; (f) medical care,
22 or any other type of remedial care as may be established by the
23 secretary; (g) home health care services; (h) private duty nursing
24 services; (i) dental services; (j) physical and occupational therapy
25 and related services; (k) prescribed drugs, dentures, and prosthetic
26 devices; and eyeglasses prescribed by a physician skilled in diseases
27 of the eye or by an optometrist, whichever the individual may select;
28 (l) personal care services, as provided in this section; (m) hospice
29 services; (n) other diagnostic, screening, preventive, and
30 rehabilitative services; and (o) like services when furnished to a
31 child by a school district in a manner consistent with the requirements
32 of this chapter. For the purposes of this section, the department may
33 not cut off any prescription medications, oxygen supplies, respiratory
34 services, or other life-sustaining medical services or supplies.

35 "Medical assistance," notwithstanding any other provision of law,
36 shall not include routine foot care, or dental services delivered by
37 any health care provider, that are not mandated by Title XIX of the

1 social security act unless there is a specific appropriation for these
2 services.

3 (2) The department shall amend the state plan for medical
4 assistance under Title XIX of the federal social security act to
5 include personal care services, as defined in 42 C.F.R. 440.170(f), in
6 the categorically needy program.

7 (3) The department shall adopt, amend, or rescind such
8 administrative rules as are necessary to ensure that Title XIX personal
9 care services are provided to eligible persons in conformance with
10 federal regulations.

11 (a) These administrative rules shall include financial eligibility
12 indexed according to the requirements of the social security act
13 providing for medicaid eligibility.

14 (b) The rules shall require clients be assessed as having a medical
15 condition requiring assistance with personal care tasks. Plans of care
16 must be (~~approved and~~) reviewed by a nurse.

17 (4) The department shall design and implement a means to assess the
18 level of functional disability of persons eligible for personal care
19 services under this section. The personal care services benefit shall
20 be provided to the extent funding is available according to the
21 assessed level of functional disability. Any reductions in services
22 made necessary for funding reasons should be accomplished in a manner
23 that assures that priority for maintaining services is given to persons
24 with the greatest need as determined by the assessment of functional
25 disability.

26 (5) The department shall report to the appropriate fiscal
27 committees of the legislature on the utilization and associated costs
28 of the personal care option under Title XIX of the federal social
29 security act, as defined in 42 C.F.R. 440.170(f), in the categorically
30 needy program. This report shall be submitted by January 1, 1990, and
31 submitted on a yearly basis thereafter.

32 (6) Effective July 1, 1989, the department shall offer hospice
33 services in accordance with available funds.

34 (7) For Title XIX personal care services administered by aging and
35 adult services administration of the department, the department shall
36 contract with area agencies on aging:

37 (a) To provide case management services to individuals receiving
38 Title XIX personal care services in their own home; and

1 (b) To reassess and reauthorize Title XIX personal care services or
2 other long-term care services as defined in section 3 of this act in
3 home or in other settings for individuals:

4 (i) Who have been initially authorized by the department to receive
5 Title XIX personal care services or other long-term care services as
6 defined in section 3 of this act; and

7 (ii) Who, at the time of reassessment and reauthorization, are
8 receiving such services in their own home.

9 NEW SECTION. Sec. 45. The legislature recognizes that elderly and
10 dependent persons who need long-term care generally want to live in
11 their homes or the least-restrictive, most independent conditions
12 possible, with access to affordable, safe, and high quality health care
13 services. In order to better understand the role of registered nurses
14 in providing nursing care services in the community, a bipartisan,
15 joint house of representatives and senate committee is formed. This
16 committee will conduct an interim study reviewing the possibility of
17 registered nurses delegating some nursing care tasks to nonlicensed
18 caregivers in community settings. The committee will include eight
19 members of the legislature, four from the house of representatives
20 health care committee, and four members of the senate health and long-
21 term care committee. Staffing will be provided by senate committee
22 services and the house office of program research, and technical
23 support by the department of health, the department of social and
24 health services, and the nursing care quality assurance commission.

25 **Sec. 46.** RCW 18.51.091 and 1987 c 476 s 24 are each amended to
26 read as follows:

27 The department shall make or cause to be made at least one
28 inspection of each nursing home (~~prior to license renewal and shall~~
29 ~~inspect community-based services as part of the licensing renewal~~
30 ~~survey)) at least every eighteen months. The inspection shall be made
31 without providing advance notice of it. Every inspection may include
32 an inspection of every part of the premises and an examination of all
33 records, methods of administration, the general and special dietary and
34 the stores and methods of supply. Those nursing homes that provide
35 community-based care shall establish and maintain separate and distinct
36 accounting and other essential records for the purpose of appropriately
37 allocating costs of the providing of such care: PROVIDED, That such~~

1 costs shall not be considered allowable costs for reimbursement
2 purposes under chapter 74.46 RCW. Following such inspection or
3 inspections, written notice of any violation of this law or the rules
4 and regulations promulgated hereunder, shall be given the applicant or
5 licensee and the department. The notice shall describe the reasons for
6 the facility's noncompliance. The department may prescribe by
7 regulations that any licensee or applicant desiring to make specified
8 types of alterations or additions to its facilities or to construct new
9 facilities shall, before commencing such alteration, addition or new
10 construction, submit its plans and specifications therefor to the
11 department for preliminary inspection and approval or recommendations
12 with respect to compliance with the regulations and standards herein
13 authorized.

14 **Sec. 47.** RCW 18.51.140 and 1986 c 266 s 83 are each amended to
15 read as follows:

16 Standards for fire protection and the enforcement thereof, with
17 respect to all nursing homes to be licensed hereunder, shall be the
18 responsibility of the director of community, trade, and economic
19 development, through the director of fire protection, who shall adopt
20 such recognized standards as may be applicable to nursing homes for the
21 protection of life against the cause and spread of fire and fire
22 hazards. The department upon receipt of an application for a license,
23 shall submit to the director of community, trade, and economic
24 development, through the director of fire protection, in writing, a
25 request for an inspection, giving the applicant's name and the location
26 of the premises to be licensed. Upon receipt of such a request, the
27 director of community, trade, and economic development, through the
28 director of fire protection, or his or her deputy, shall make an
29 inspection of the nursing home to be licensed, and if it is found that
30 the premises do not comply with the required safety standards and fire
31 regulations as promulgated by the director of community, trade, and
32 economic development, through the director of fire protection, he or
33 she shall promptly make a written report to the nursing home and the
34 department as to the manner and time allowed in which the premises must
35 qualify for a license and set forth the conditions to be remedied with
36 respect to fire regulations. The department, applicant or licensee
37 shall notify the director of community, trade, and economic
38 development, through the director of fire protection, upon completion

1 of any requirements made by him or her, and the director of community,
2 trade, and economic development, through the director of fire
3 protection, or his or her deputy, shall make a reinspection of such
4 premises. Whenever the nursing home to be licensed meets with the
5 approval of the director of community, trade, and economic development,
6 through the director of fire protection, he or she shall submit to the
7 department, a written report approving same with respect to fire
8 protection before a full license can be issued. The director of
9 community, trade, and economic development, through the director of
10 fire protection, shall make or cause to be made inspections of such
11 nursing homes at least ((annually)) every eighteen months.

12 In cities which have in force a comprehensive building code, the
13 provisions of which are determined by the director of community, trade,
14 and economic development, through the director of fire protection, to
15 be equal to the minimum standards of the code for nursing homes adopted
16 by the director of community, trade, and economic development, through
17 the director of fire protection, the chief of the fire department,
18 provided the latter is a paid chief of a paid fire department, shall
19 make the inspection with the director of community, trade, and economic
20 development, through the director of fire protection, or his or her
21 deputy and they shall jointly approve the premises before a full
22 license can be issued.

23 **Sec. 48.** RCW 18.51.300 and 1981 1st ex.s. c 2 s 24 are each
24 amended to read as follows:

25 Unless specified otherwise by the department, a nursing home shall
26 retain and preserve all records which relate directly to the care and
27 treatment of a patient for a period of no less than ((ten)) eight years
28 following the most recent discharge of the patient; except the records
29 of minors, which shall be retained and preserved for a period of no
30 less than three years following attainment of the age of eighteen
31 years, or ten years following such discharge, whichever is longer.

32 If a nursing home ceases operations, it shall make immediate
33 arrangements, as approved by the department, for preservation of its
34 records.

35 The department shall by regulation define the type of records and
36 the information required to be included in the records to be retained
37 and preserved under this section; which records may be retained in
38 photographic form pursuant to chapter 5.46 RCW.

1 **Sec. 49.** RCW 74.42.020 and 1982 c 120 s 1 are each amended to read
2 as follows:

3 The standards in ((RCW 74.42.030 through 74.42.570)) this chapter
4 are the minimum standards for facilities licensed under chapter 18.51
5 RCW((:— PROVIDED, HOWEVER, That RCW 74.42.040, 74.42.140 through
6 74.42.280, 74.42.300, 74.42.360, 74.42.370, 74.42.380, 74.42.420 (2),
7 (4), (5), (6) and (7), 74.42.430(3), 74.42.450 (2) and (3), 74.42.520,
8 74.42.530, 74.42.540, 74.42.570, and 74.42.580 shall not apply to
9 Christian Science sanatoria facilities operated and listed or certified
10 by The First Church of Christ, Scientist, in Boston, Massachusetts)).

11 Nothing in this chapter or the rules and regulations adopted under
12 this chapter shall be construed as authorizing the supervision,
13 regulation, or control of the remedial care or treatment of residents
14 or patients in any nursing home or institution conducted for those who
15 rely upon treatment by prayer or spiritual means in accordance with the
16 creed or tenets of any well-recognized church or religious
17 denomination, or for any nursing home or institution operated for the
18 exclusive care of members of a convent as defined in RCW 84.36.800 or
19 rectory, monastery, or other institution operated for the care of
20 members of the clergy.

21 **NEW SECTION. Sec. 50.** A new section is added to chapter 74.39A
22 RCW to read as follows:

23 The legislature finds that:

24 (1) A substantial proportion of individuals who are admitted to
25 nursing facilities do so without first being given adequate information
26 about other services that could meet their needs and that they may
27 prefer;

28 (2) After entering a nursing facility, many residents become
29 dependent on that facility, experiencing depletion of their financial
30 resources and erosion of their social contacts in the community;

31 (3) Inappropriate placements of individuals in nursing facilities
32 result in higher costs for those individuals and for the state and
33 results in reduced access to available beds for those individuals whose
34 needs can best be met in a nursing facility; and

35 (4) Providing information about appropriate in-home and community
36 services to individuals and their families early during the
37 individual's hospital stay would help the individual and family make
38 informed choices regarding their long-term care options.

1 NEW SECTION. **Sec. 51.** A new section is added to chapter 74.39A
2 RCW to read as follows:

3 The department shall work in partnership with hospitals in
4 assisting patients and their families to find long-term care services
5 of their choice. The department shall not delay hospital discharges
6 but shall assist and support the activities of hospital discharge
7 planners. The department also shall coordinate with home health and
8 hospice agencies whenever appropriate. The role of the department is
9 to assist the hospital and to assist patients and their families in
10 making informed choices by providing information regarding home and
11 community options to individuals who are hospitalized and likely to
12 need long-term care.

13 (1) The department shall assess individuals who:

14 (a) Are medicaid clients, medicaid applicants, or eligible for both
15 medicare and medicaid; and

16 (b) Apply or are likely to apply for admission to a nursing
17 facility.

18 (2) For individuals who are reasonably expected to become medicaid
19 recipients within one hundred eighty days of admission to a nursing
20 facility, the department shall offer an assessment and information
21 regarding appropriate in-home and community services.

22 (3) When the department finds, based on assessment, that the
23 individual prefers and could live appropriately and cost-effectively at
24 home or in some other community-based setting, the department shall:

25 (a) Advise the individual that an in-home or other community
26 service is appropriate;

27 (b) Develop, with the individual or the individual's
28 representative, a comprehensive community service plan;

29 (c) Inform the individual regarding the availability of services
30 that could meet the applicant's needs as set forth in the community
31 service plan and explain the cost to the applicant of the available in-
32 home and community services relative to nursing facility care; and

33 (d) Discuss and evaluate the need for on-going involvement with the
34 individual or the individual's representative.

35 (4) When the department finds, based on assessment, that the
36 individual prefers and needs nursing facility care, the department
37 shall:

38 (a) Advise the individual that nursing facility care is appropriate
39 and inform the individual of the available nursing facility vacancies;

1 (b) If appropriate, advise the individual that the stay in the
2 nursing facility may be short term; and

3 (c) Describe the role of the department in providing nursing
4 facility case management.

5 NEW SECTION. **Sec. 52.** A new section is added to chapter 74.42 RCW
6 to read as follows:

7 A nursing facility shall not admit any individual who is medicaid
8 eligible unless that individual has been assessed by the department.
9 A medicaid-eligible individual residing in a nursing facility who is
10 transferred to an acute care hospital shall not require a department
11 assessment under this section prior to returning to the same or another
12 nursing facility.

13 If a nursing facility admits an individual who is medicaid eligible
14 without assessment by the department, the effective date of the initial
15 authorization will be the date of the request for a department
16 assessment. A facility that admits such an individual without
17 assessment by the department shall not be reimbursed by the department
18 and shall not collect payment from a medicaid eligible individual for
19 any care rendered before the date the facility makes a request to the
20 department for an assessment.

21 NEW SECTION. **Sec. 53.** A new section is added to chapter 74.42 RCW
22 to read as follows:

23 If a nursing facility has reason to know that a resident is likely
24 to become financially eligible for medicaid benefits within one hundred
25 eighty days, the nursing facility shall notify the department. The
26 department may:

27 (1) Assess any such resident to determine if the resident prefers
28 and could live appropriately at home or in some other community-based
29 setting; and

30 (2) Provide case management services to the resident.

31 NEW SECTION. **Sec. 54.** A new section is added to chapter 74.42 RCW
32 to read as follows:

33 The department shall provide case management services to assist
34 nursing facility residents, in conjunction and partnership with nursing
35 facility staff. The purpose of the case management services is to
36 assist residents and their families to assess the appropriateness and

1 availability of home and community services that could meet the
2 resident's needs so that the resident and family can make informed
3 choices.

4 The department shall provide case management services to nursing
5 facility residents who are:

6 (1) Medicaid funded;

7 (2) Dually medicaid and medicare eligible;

8 (3) Medicaid applicants; and

9 (4) Likely to become financially eligible for medicaid within one
10 hundred eighty days.

11 NEW SECTION. **Sec. 55.** A new section is added to chapter 74.39A
12 RCW to read as follows:

13 (1) The legislature finds that it is necessary to control and
14 manage the cost and growth of the medicaid nursing facility care the
15 state purchases by contract.

16 (2) The legislature finds that it is necessary to impose a
17 moratorium on new medicaid nursing facility contracts and on expansion
18 of existing medicaid nursing facility contracts while the department
19 evaluates and, if appropriate, seeks any necessary federal approval to
20 purchase nursing facility care either through selective contracting or
21 through a capitated managed care program.

22 NEW SECTION. **Sec. 56.** A new section is added to chapter 74.39A
23 RCW to read as follows:

24 (1) The department shall evaluate and determine whether selective
25 contracting or capitated managed care would be effective in controlling
26 the cost of medicaid nursing facility care while maintaining adequate
27 access and quality. If the department determines that either selective
28 contracting or capitated managed care would be cost-effective, the
29 department shall submit its request for any necessary approvals for
30 whichever one is more cost-effective to the appropriate federal agency
31 by December 1, 1997.

32 (2) In making its determination of whether selective contracting or
33 capitated managed care would be effective in controlling the cost of
34 nursing facility care while maintaining adequate access and quality,
35 the department shall consider at least the following:

36 (a) The fiscal impact of implementation;

1 (b) The effect of growing home and community services on the future
2 need for nursing facility care; and

3 (c) Safeguards to assure adequate access and quality of contracted
4 nursing facility care.

5 NEW SECTION. **Sec. 57.** A new section is added to chapter 74.09 RCW
6 to read as follows:

7 The department shall impose, on the effective date of this act, a
8 moratorium on new contracts and on expansion of existing contracts for
9 medicaid nursing facility care, effective until December 31, 1998, or
10 until selective contracting or capitated managed care is implemented,
11 whichever is sooner. During the moratorium, the department shall enter
12 into new contracts or expand the number of beds served under an
13 existing contract only in the event the department determines there is
14 a severe shortage of contracted beds in an area resulting in inadequate
15 access of nursing facility care for medicaid recipients.

16 The department may adopt rules necessary to implement the
17 moratorium.

18 **Sec. 58.** RCW 74.09.120 and 1993 sp.s. c 3 s 8 are each amended to
19 read as follows:

20 The department shall purchase necessary physician and dentist
21 services by contract or "fee for service." The department shall
22 purchase nursing ((home)) facility care by contract as provided in
23 sections 55 through 57 of this act. The department shall establish
24 regulations for reasonable nursing home accounting and reimbursement
25 systems, which shall provide that no payment shall be made to a nursing
26 home ((which)) that does not permit inspection by the department of
27 social and health services of every part of its premises and an
28 examination of all records, including financial records, methods of
29 administration, general and special dietary programs, the disbursement
30 of drugs and methods of supply, and any other records the department
31 deems relevant to the establishment of such a system.

32 The department may purchase nursing home care by contract in
33 veterans' homes operated by the state department of veterans affairs.
34 The department shall establish rules for reasonable accounting and
35 reimbursement systems for such care.

36 The department may purchase care in institutions for the mentally
37 retarded, also known as intermediate care facilities for the mentally

1 retarded. The department shall establish rules for reasonable
2 accounting and reimbursement systems for such care. Institutions for
3 the mentally retarded include licensed nursing homes, public
4 institutions, licensed boarding homes with fifteen beds or less, and
5 hospital facilities certified as intermediate care facilities for the
6 mentally retarded under the federal medicaid program to provide health,
7 habilitative, or rehabilitative services and twenty-four hour
8 supervision for mentally retarded individuals or persons with related
9 conditions and includes in the program "active treatment" as federally
10 defined.

11 The department may purchase care in institutions for mental
12 diseases by contract. The department shall establish rules for
13 reasonable accounting and reimbursement systems for such care.
14 Institutions for mental diseases are certified under the federal
15 medicaid program and primarily engaged in providing diagnosis,
16 treatment, or care to persons with mental diseases, including medical
17 attention, nursing care, and related services.

18 The department may purchase all other services provided under this
19 chapter by contract or at rates established by the department.

20 NEW SECTION. **Sec. 59.** A new section is added to chapter 74.39A
21 RCW to read as follows:

22 (1) A person who receives an asset from an applicant for or
23 recipient of long-term care services for less than fair market value
24 shall be subject to a civil fine payable to the department if:

25 (a) The applicant for or recipient of long-term care services
26 transferred the asset for the purpose of qualifying for state or
27 federal coverage for long-term care services and the person who
28 received the asset was aware, or should have been aware, of this
29 purpose;

30 (b) Such transfer establishes a period of ineligibility for such
31 service under state or federal laws or regulations; and

32 (c) The department provides coverage for such services during the
33 period of ineligibility because the failure to provide such coverage
34 would result in an undue hardship for the applicant or recipient.

35 (2) The civil fine imposed under this section shall be imposed in
36 a judicial proceeding initiated by the department and shall equal the
37 amount the department expends for the care of the applicant or

1 recipient during the period of ineligibility attributable to the amount
2 transferred to the person subject to the civil fine.

3 (3) Transfers subject to a civil fine under this section shall be
4 considered null and void and a fraudulent conveyance as to the
5 department. The department shall have the right to petition a court to
6 set aside such transfers and require all assets transferred returned to
7 the applicant or recipient.

8 NEW SECTION. **Sec. 60.** A new section is added to chapter 74.39A
9 RCW to read as follows:

10 (1) All payments made in state-funded long-term care shall be
11 recoverable as if they were medical assistance payments subject to
12 recovery under 42 U.S.C. Sec. 1396p and chapter 43.20B RCW, but without
13 regard to the recipient's age.

14 (2) In determining eligibility for state-funded long-term care
15 services programs, the department shall impose the same rules with
16 respect to the transfer of assets for less than fair market value as
17 are imposed under 42 U.S.C. 1396p with respect to nursing home and home
18 and community services.

19 NEW SECTION. **Sec. 61.** A new section is added to chapter 74.39A
20 RCW to read as follows:

21 Notwithstanding any other provision of law:

22 (1) In order to facilitate and ensure compliance with the federal
23 social security act, Title XIX, as now existing or hereafter amended,
24 later enactment to be adopted by reference by the director by rule, and
25 other state laws mandating recovery of assets from estates of persons
26 receiving long-term care services, the secretary of the department,
27 with the approval of the office of the attorney general, may pay the
28 reasonable and proper fees of attorneys admitted to practice before
29 courts of this state, and associated professionals such as guardians,
30 who are engaged in probate practice for the purpose of maintaining
31 actions under Title 11 RCW, to the end that assets are not wasted, but
32 are rather collected and preserved, and used for the care of the client
33 or the reimbursement of the department pursuant to this chapter or
34 chapter 43.20B RCW.

35 (2) The department may hire such other agencies and professionals
36 on a contingency basis or otherwise as are necessary and cost-effective

1 to collect bad debts owed to the department for long-term care
2 services.

3 **Sec. 62.** RCW 11.40.010 and 1994 c 221 s 25 are each amended to
4 read as follows:

5 Every personal representative shall, after appointment and
6 qualification, give a notice to the creditors of the deceased, stating
7 such appointment and qualification as personal representative and
8 requiring all persons having claims against the deceased to serve the
9 same on the personal representative or the estate's attorney of record,
10 and file an executed copy thereof with the clerk of the court, within
11 four months after the date of the first publication of such notice
12 described in this section or within four months after the date of the
13 filing of the copy of such notice with the clerk of the court,
14 whichever is the later, or within the time otherwise provided in RCW
15 11.40.013. The four-month time period after the later of the date of
16 the first publication of the notice to creditors or the date of the
17 filing of such notice with the clerk of the court is referred to in
18 this chapter as the "four-month time limitation." Such notice shall be
19 given as follows:

20 (1) The personal representative shall give actual notice, as
21 provided in RCW 11.40.013, to such creditors who become known to the
22 personal representative within such four-month time limitation;

23 (2) The personal representative shall cause such notice to be
24 published once in each week for three successive weeks in the county in
25 which the estate is being administered; ~~((and))~~

26 (3) The personal representative shall file a copy of such notice
27 with the clerk of the court; and

28 (4) The personal representative shall mail a copy of the notice,
29 including the decedent's social security number, to the state of
30 Washington, department of social and health services, office of
31 financial recovery.

32 Except as otherwise provided in RCW 11.40.011 or 11.40.013, any
33 claim not filed within the four-month time limitation shall be forever
34 barred, if not already barred by any otherwise applicable statute of
35 limitations. This bar is effective as to claims against both the
36 decedent's probate assets and nonprobate assets as described in RCW
37 11.18.200. Proof by affidavit of the giving and publication of such
38 notice shall be filed with the court by the personal representative.

1 Acts of a notice agent in complying with chapter 221, Laws of 1994
2 may be adopted and ratified by the personal representative as if done
3 by the personal representative in complying with this chapter, except
4 that if at the time of the appointment and qualification of the
5 personal representative a notice agent had commenced nonprobate notice
6 to creditors under chapter 11.42 RCW, the personal representative shall
7 give published notice as provided in RCW 11.42.180.

8 **Sec. 63.** RCW 11.42.020 and 1994 c 221 s 32 are each amended to
9 read as follows:

10 (1) The notice agent may give nonprobate notice to the creditors of
11 the decedent if:

12 (a) As of the date of the filing of a copy of the notice with the
13 clerk of the superior court for the notice county, the notice agent has
14 no knowledge of the appointment and qualification of a personal
15 representative in the decedent's estate in the state of Washington or
16 of another person becoming a notice agent; and

17 (b) According to the records of the clerk of the superior court for
18 the notice county as of 8:00 a.m. on the date of the filing, no
19 personal representative of the decedent's estate had been appointed and
20 qualified and no cause number regarding the decedent had been issued to
21 any other notice agent by the clerk under RCW 11.42.010.

22 (2) The notice must state that all persons having claims against
23 the decedent shall: (a) Serve the same on the notice agent if the
24 notice agent is a resident of the state of Washington upon whom service
25 of all papers may be made, or on the nonprobate resident agent for the
26 notice agent, if any, or on the attorneys of record of the notice agent
27 at their respective address in the state of Washington; and (b) file an
28 executed copy of the notice with the clerk of the superior court for
29 the notice county, within: (i)(A) Four months after the date of the
30 first publication of the notice described in this section; or (B) four
31 months after the date of the filing of the copy of the notice with the
32 clerk of the superior court for the notice county, whichever is later;
33 or (ii) the time otherwise provided in RCW 11.42.050. The four-month
34 time period after the later of the date of the first publication of the
35 notice to creditors or the date of the filing of the notice with the
36 clerk of the court is referred to in this chapter as the "four-month
37 time limitation."

1 (3) The notice agent shall declare in the notice in affidavit form
2 or under the penalty of perjury under the laws of the state of
3 Washington as provided in RCW 9A.72.085 that: (a) The notice agent is
4 entitled to give the nonprobate notice under subsection (1) of this
5 section; and (b) the notice is being given by the notice agent as
6 permitted by this section.

7 (4) The notice agent shall sign the notice and file it with the
8 clerk of the superior court for the notice county. The notice must be
9 given as follows:

10 (a) The notice agent shall give actual notice as to creditors of
11 the decedent who become known to the notice agent within the four-month
12 time limitation as required in RCW 11.42.050;

13 (b) The notice agent shall cause the notice to be published once in
14 each week for three successive weeks in the notice county; ~~((and))~~

15 (c) The notice agent shall file a copy of the notice with the clerk
16 of the superior court for the notice county; and

17 (d) The notice agent shall mail a copy of the notice, including the
18 decedent's social security number, to the state of Washington,
19 department of social and health services, office of financial recovery.

20 (5) A claim not filed within the four-month time limitation is
21 forever barred, if not already barred by an otherwise applicable
22 statute of limitations, except as provided in RCW 11.42.030 or
23 11.42.050. The bar is effective to bar claims against both the probate
24 estate of the decedent and nonprobate assets that were subject to
25 satisfaction of the decedent's general liabilities immediately before
26 the decedent's death. If a notice to the creditors of a decedent is
27 published by more than one notice agent and the notice agents are not
28 acting jointly, the four-month time limitation means the four-month
29 time limitation that applies to the notice agent who first publishes
30 the notice. Proof by affidavit or perjury declaration made under RCW
31 9A.72.085 of the giving and publication of the notice must be filed
32 with the clerk of the superior court for the notice county by the
33 notice agent.

34 **Sec. 64.** RCW 11.62.010 and 1993 c 291 s 1 are each amended to read
35 as follows:

36 (1) At any time after forty days from the date of a decedent's
37 death, any person who is indebted to or who has possession of any
38 personal property belonging to the decedent or to the decedent and his

1 or her surviving spouse as a community, which debt or personal property
2 is an asset which is subject to probate, shall pay such indebtedness or
3 deliver such personal property, or so much of either as is claimed, to
4 a person claiming to be a successor of the decedent upon receipt of
5 proof of death and of an affidavit made by said person which meets the
6 requirements of subsection (2) of this section.

7 (2) An affidavit which is to be made pursuant to this section shall
8 state:

9 (a) The claiming successor's name and address, and that the
10 claiming successor is a "successor" as defined in RCW 11.62.005;

11 (b) That the decedent was a resident of the state of Washington on
12 the date of his or her death;

13 (c) That the value of the decedent's entire estate subject to
14 probate, not including the surviving spouse's community property
15 interest in any assets which are subject to probate in the decedent's
16 estate, wherever located, less liens and encumbrances, does not exceed
17 sixty thousand dollars;

18 (d) That forty days have elapsed since the death of the decedent;

19 (e) That no application or petition for the appointment of a
20 personal representative is pending or has been granted in any
21 jurisdiction;

22 (f) That all debts of the decedent including funeral and burial
23 expenses have been paid or provided for;

24 (g) A description of the personal property and the portion thereof
25 claimed, together with a statement that such personal property is
26 subject to probate;

27 (h) That the claiming successor has given written notice, either by
28 personal service or by mail, identifying his or her claim, and
29 describing the property claimed, to all other successors of the
30 decedent, and that at least ten days have elapsed since the service or
31 mailing of such notice; and

32 (i) That the claiming successor is either personally entitled to
33 full payment or delivery of the property claimed or is entitled to full
34 payment or delivery thereof on the behalf and with the written
35 authority of all other successors who have an interest therein.

36 (3) A transfer agent of any security shall change the registered
37 ownership of the security claimed from the decedent to the person
38 claiming to be the successor with respect to such security upon the
39 presentation of proof of death and of an affidavit made by such person

1 which meets the requirements of subsection (2) of this section. Any
2 governmental agency required to issue certificates of ownership or of
3 license registration to personal property shall issue a new certificate
4 of ownership or of license registration to a person claiming to be a
5 successor of the decedent upon receipt of proof of death and of an
6 affidavit made by such person which meets the requirements of
7 subsection (2) of this section.

8 (4) No release from any Washington state or local taxing authority
9 may be required before any assets or debts are paid or delivered to a
10 successor of a decedent as required under this section.

11 (5) A copy of the affidavit, including the decedent's social
12 security number, shall be mailed to the state of Washington, department
13 of social and health services, office of financial recovery.

14 **Sec. 65.** RCW 11.28.120 and 1994 c 221 s 23 are each amended to
15 read as follows:

16 Administration of an estate if the decedent died intestate or if
17 the personal representative or representatives named in the will
18 declined or were unable to serve shall be granted to some one or more
19 of the persons hereinafter mentioned, and they shall be respectively
20 entitled in the following order:

21 (1) The surviving spouse, or such person as he or she may request
22 to have appointed.

23 (2) The next of kin in the following order: (a) Child or children;
24 (b) father or mother; (c) brothers or sisters; (d) grandchildren; (e)
25 nephews or nieces.

26 (3) The trustee named by the decedent in an inter vivos trust
27 instrument, testamentary trustee named in the will, guardian of the
28 person or estate of the decedent, or attorney in fact appointed by the
29 decedent, if any such a fiduciary controlled or potentially controlled
30 substantially all of the decedent's probate and nonprobate assets.

31 (4) One or more of the beneficiaries or transferees of the
32 decedent's probate or nonprobate assets.

33 (5)(a) The director of revenue, or the director's designee, for
34 those estates having property subject to the provisions of chapter
35 11.08 RCW; however, the director may waive this right.

36 (b) The secretary of the department of social and health services
37 for those estates owing debts for long-term care services as defined in
38 section 3 of this act; however the secretary may waive this right.

1 (6) One or more of the principal creditors.

2 (7) If the persons so entitled shall fail for more than forty days
3 after the death of the decedent to present a petition for letters of
4 administration, or if it appears to the satisfaction of the court that
5 there is no next of kin, as above specified eligible to appointment, or
6 they waive their right, and there are no principal creditor or
7 creditors, or such creditor or creditors waive their right, then the
8 court may appoint any suitable person to administer such estate.

9 **Sec. 66.** RCW 18.39.250 and 1989 c 390 s 3 are each amended to read
10 as follows:

11 (1) Any funeral establishment selling funeral merchandise or
12 services by prearrangement funeral service contract and accepting
13 moneys therefore shall establish and maintain one or more
14 prearrangement funeral service trusts under Washington state law with
15 two or more designated trustees, for the benefit of the beneficiary of
16 the prearrangement funeral service contract or may join with one or
17 more other Washington state licensed funeral establishments in a
18 "master trust" provided that each member of the "master trust" shall
19 comply individually with the requirements of this chapter.

20 (2) Up to ten percent of the cash purchase price of each
21 prearrangement funeral service contract, excluding sales tax, may be
22 retained by the funeral establishment unless otherwise provided in this
23 chapter. If the prearrangement funeral service contract is canceled
24 within thirty calendar days of its signing, then the purchaser shall
25 receive a full refund of all moneys paid under the contract.

26 (3) At least ninety percent of the cash purchase price of each
27 prearrangement funeral service contract, paid in advance, excluding
28 sales tax, shall be placed in the trust established or utilized by the
29 funeral establishment. Deposits to the prearrangement funeral service
30 trust shall be made not later than the twentieth day of the month
31 following receipt of each payment made on the last ninety percent of
32 each prearrangement funeral service contract, excluding sales tax.

33 (4) All prearrangement funeral service trust moneys shall be
34 deposited in an insured account in a qualified public depository or
35 shall be invested in instruments issued or insured by any agency of the
36 federal government if these securities are held in a public depository.
37 The account shall be designated as the prearrangement funeral service
38 trust of the funeral establishment for the benefit of the beneficiaries

1 named in the prearrangement funeral service contracts. The
2 prearrangement funeral service trust shall not be considered as, nor
3 shall it be used as, an asset of the funeral establishment.

4 (5) After deduction of reasonable fees for the administration of
5 the trust, taxes paid or withheld, or other expenses of the trust, all
6 interest, dividends, increases, or accretions of whatever nature earned
7 by a trust shall be kept unimpaired and shall become a part of the
8 trust. Adequate records shall be maintained to allocate the share of
9 principal and interest to each contract. Fees deducted for the
10 administration of the trust shall not exceed one percent of the face
11 amount of the prearrangement funeral service contract per annum. In no
12 instance shall the administrative charges deducted from the
13 prearrangement funeral service trust reduce, diminish, or in any other
14 way lessen the value of the trust so that the services or merchandise
15 provided for under the contract are reduced, diminished, or in any
16 other way lessened.

17 (6) Except as otherwise provided in this chapter, the trustees of
18 a prearrangement funeral service trust shall permit withdrawal of all
19 funds deposited under a prearrangement funeral service contract, plus
20 accruals thereon, under the following circumstances and conditions:

21 (a) If the funeral establishment files a verified statement with
22 the trustees that the prearrangement funeral merchandise and services
23 covered by the contract have been furnished and delivered in accordance
24 therewith; or

25 (b) If the funeral establishment files a verified statement with
26 the trustees that the prearrangement funeral merchandise and services
27 covered by the contract have been canceled in accordance with its
28 terms.

29 (7) Subsequent to the thirty calendar day cancellation period
30 provided for in this chapter, any purchaser or beneficiary who has a
31 revocable prearrangement funeral service contract has the right to
32 demand a refund of the amount in trust.

33 (8) Prearrangement funeral service contracts which have or should
34 have an account in a prearrangement funeral service trust may be
35 terminated by the board if the funeral establishment goes out of
36 business, becomes insolvent or bankrupt, makes an assignment for the
37 benefit of creditors, has its prearrangement funeral service
38 certificate of registration revoked, or for any other reason is unable
39 to fulfill the obligations under the contract. In such event, or upon

1 demand by the purchaser or beneficiary of the prearrangement funeral
2 service contract, the funeral establishment shall refund to the
3 purchaser or beneficiary all moneys deposited in the trust and
4 allocated to the contract unless otherwise ordered by a court of
5 competent jurisdiction. The purchaser or beneficiary may, in lieu of
6 a refund, elect to transfer the prearrangement funeral service contract
7 and all amounts in trust to another funeral establishment licensed
8 under this chapter which will agree, by endorsement to the contract, to
9 be bound by the contract and to provide the funeral merchandise or
10 services. Election of this option shall not relieve the defaulting
11 funeral establishment of its obligation to the purchaser or beneficiary
12 for any amounts required to be, but not placed, in trust.

13 (9) Prior to the sale or transfer of ownership or control of any
14 funeral establishment which has contracted for prearrangement funeral
15 service contracts, any person, corporation, or other legal entity
16 desiring to acquire such ownership or control shall apply to the
17 director in accordance with RCW 18.39.145. Persons and business
18 entities selling or relinquishing, and persons and business entities
19 purchasing or acquiring ownership or control of such funeral
20 establishments shall each verify and attest to a report showing the
21 status of the prearrangement funeral service trust or trusts on the
22 date of the sale. This report shall be on a form prescribed by the
23 board and shall be considered part of the application for a funeral
24 establishment license. In the event of failure to comply with this
25 subsection, the funeral establishment shall be deemed to have gone out
26 of business and the provisions of subsection (8) of this section shall
27 apply.

28 (10) Prearrangement funeral service trust moneys shall not be used,
29 directly or indirectly, for the benefit of the funeral establishment or
30 any director, officer, agent, or employee of the funeral establishment
31 including, but not limited to, any encumbrance, pledge, or other use of
32 prearrangement funeral service trust moneys as collateral or other
33 security.

34 (11)(a) If, at the time of the signing of the prearrangement
35 funeral service contract, the beneficiary of the trust is a recipient
36 of public assistance as defined in RCW 74.04.005, or reasonably
37 anticipates being so defined, the contract may provide that the trust
38 will be irrevocable. If after the contract is entered into, the
39 beneficiary becomes eligible or seeks to become eligible for public

1 assistance under Title 74 RCW, the contract may provide for an election
2 by the beneficiary, or by the purchaser on behalf of the beneficiary,
3 to make the trust irrevocable thereafter in order to become or remain
4 eligible for such assistance.

5 (b) The department of social and health services shall notify the
6 trustee of any prearrangement service trust that the department has a
7 claim on the estate of a beneficiary for long-term care services. Such
8 notice shall be renewed at least every three years. The trustees upon
9 becoming aware of the death of a beneficiary shall give notice to the
10 department of social and health services, office of financial recovery,
11 who shall file any claim there may be within thirty days of the notice.

12 (12) Every prearrangement funeral service contract financed through
13 a prearrangement funeral service trust shall contain language which:

14 (a) Informs the purchaser of the prearrangement funeral service
15 trust and the amount to be deposited in the trust;

16 (b) Indicates if the contract is revocable or not in accordance
17 with subsection (11) of this section;

18 (c) Specifies that a full refund of all moneys paid on the contract
19 will be made if the contract is canceled within thirty calendar days of
20 its signing;

21 (d) Specifies that, in the case of cancellation by a purchaser or
22 beneficiary eligible to cancel under the contract or under this
23 chapter, up to ten percent of the contract amount may be retained by
24 the seller to cover the necessary expenses of selling and setting up
25 the contract;

26 (e) Identifies the trust to be used and contains information as to
27 how the trustees may be contacted.

28 **Sec. 67.** RCW 18.39.255 and 1989 c 390 s 4 are each amended to read
29 as follows:

30 Prearranged funeral service contracts funded through insurance
31 shall contain language which:

32 (1) States the amount of insurance;

33 (2) Informs the purchaser of the name and address of the insurance
34 company through which the insurance will be provided, the policy
35 number, and the name of the beneficiary; ((and))

36 (3) Informs the purchaser that amounts paid for insurance may not
37 be refundable;

1 (4) Informs that any funds from the policy not used for services
2 may be subject to a claim for reimbursement for long-term care services
3 paid for by the state; and

4 (5) States that for purposes of the contract, the procedures in RCW
5 18.39.250(11)(b) shall control such recoupment.

6 **Sec. 68.** RCW 68.46.050 and 1973 1st ex.s. c 68 s 5 are each
7 amended to read as follows:

8 (1) A bank, trust company, or savings and loan association
9 designated as the depository of prearrangement funds shall permit
10 withdrawal by a cemetery authority of all funds deposited under any
11 specific prearrangement contract plus interest accrued thereon, under
12 the following circumstances and conditions:

13 ~~((+1))~~ (a) If the cemetery authority files a verified statement
14 with the depository that the prearrangement merchandise and services
15 covered by a contract have been furnished and delivered in accordance
16 therewith; or

17 ~~((+2))~~ (b) If the cemetery authority files a verified statement
18 that a specific prearrangement contract has been canceled in accordance
19 with its terms.

20 (2) The department of social and health services shall notify the
21 cemetery authority maintaining a prearrangement trust fund regulated by
22 this chapter that the department has a claim on the estate of a
23 beneficiary for long-term care services. Such notice shall be renewed
24 at least every three years. The cemetery authority upon becoming aware
25 of the death of a beneficiary shall give notice to the department of
26 social and health services, office of financial recovery, who shall
27 file any claim there may be within thirty days of the notice.

28 **Sec. 69.** RCW 70.129.040 and 1994 c 214 s 5 are each amended to
29 read as follows:

30 (1) The resident has the right to manage his or her financial
31 affairs, and the facility may not require residents to deposit their
32 personal funds with the facility.

33 (2) Upon written authorization of a resident, if the facility
34 agrees to manage the resident's personal funds, the facility must hold,
35 safeguard, manage, and account for the personal funds of the resident
36 deposited with the facility as specified in this section.

1 (~~(3)~~)(a) The facility must deposit a resident's personal funds in
2 excess of one hundred dollars in an interest-bearing account or
3 accounts that is separate from any of the facility's operating
4 accounts, and that credits all interest earned on residents' funds to
5 that account. In pooled accounts, there must be a separate accounting
6 for each resident's share.

7 (b) The facility must maintain a resident's personal funds that do
8 not exceed one hundred dollars in a noninterest-bearing account,
9 interest-bearing account, or petty cash fund.

10 (~~(4)~~) (3) The facility must establish and maintain a system that
11 assures a full and complete and separate accounting of each resident's
12 personal funds entrusted to the facility on the resident's behalf.

13 (a) The system must preclude any commingling of resident funds with
14 facility funds or with the funds of any person other than another
15 resident.

16 (b) The individual financial record must be available on request to
17 the resident or his or her legal representative.

18 (~~(5)~~) (4) Upon the death of a resident with a personal fund
19 deposited with the facility the facility must convey within forty-five
20 days the resident's funds, and a final accounting of those funds, to
21 the individual or probate jurisdiction administering the resident's
22 estate; but in the case of a resident who received long-term care
23 services paid for by the state, the funds and accounting shall be sent
24 to the state of Washington, department of social and health services,
25 office of financial recovery. The department may establish a release
26 procedure for the costs of final disposition.

27 **Sec. 70.** RCW 43.20B.080 and 1994 c 21 s 3 are each amended to read
28 as follows:

29 (1) The department shall file liens, seek adjustment, or otherwise
30 effect recovery for medical assistance correctly paid on behalf of an
31 individual as required by this chapter and 42 U.S.C. Sec. 1396p.

32 (2) Liens may be adjusted by foreclosure in accordance with chapter
33 61.12 RCW.

34 (3) In the case of an individual who was fifty-five years (~~or~~
35 ~~{or}~~) of age or older when the individual received medical assistance,
36 the department shall seek adjustment or recovery from the individual's
37 estate, and from nonprobate assets of the individual as defined by RCW
38 11.02.005 except property passing through a community property

1 agreement, but only for medical assistance consisting of nursing
2 facility services, home and community-based services, other services
3 that the department determines to be appropriate, and related hospital
4 and prescription drug services. Recovery from the individual's estate,
5 including foreclosure of liens imposed under this section, shall be
6 undertaken as soon as practicable, consistent with the requirements of
7 42 U.S.C. Sec. 1396p.

8 ((+3)) (4)(a) The department shall establish procedures consistent
9 with standards established by the federal department of health and
10 human services and pursuant to 42 U.S.C. Sec. 1396p to waive recovery
11 when such recovery would work an undue hardship.

12 ((+4)) (b) Recovery of medical assistance from a recipient's
13 estate shall not include property made exempt from claims by federal
14 law or treaty, including exemption of tribal artifacts that may be held
15 by individual Native Americans.

16 (5) The department is authorized to adopt rules to effect recovery
17 under this section. The department may adopt by rule later enactments
18 of the federal laws referenced in this section.

19 NEW SECTION. Sec. 71. A new section is added to chapter 74.46 RCW
20 to read as follows:

21 Upon the death of a resident with a personal fund deposited with
22 the facility, the facility must convey within forty-five days the
23 resident's funds, and a final accounting of those funds, to the
24 individual or probate jurisdiction administering the resident's estate;
25 but in the case of a resident who received long-term care services, the
26 funds and accounting shall be sent to the state of Washington,
27 department of social and health services, office of financial recovery.
28 The department may establish a release procedure for the costs of final
29 disposition.

30 **Sec. 72.** RCW 74.46.020 and 1993 sp.s. c 13 s 1 are each amended to
31 read as follows:

32 Unless the context clearly requires otherwise, the definitions in
33 this section apply throughout this chapter.

34 (1) "Accrual method of accounting" means a method of accounting in
35 which revenues are reported in the period when they are earned,
36 regardless of when they are collected, and expenses are reported in the
37 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:

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

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

35 (b) Any person who, directly or indirectly, creates or uses a
36 trust, proxy, power of attorney, pooling arrangement, or any other
37 contract, arrangement, or device with the purpose or effect of
38 divesting himself of beneficial ownership of an ownership interest or

1 preventing the vesting of such beneficial ownership as part of a plan
2 or scheme to evade the reporting requirements of this chapter;

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

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

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

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

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

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

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

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

33 (ii) The pledgee agreement, prior to default, does not grant to the
34 pledgee:

35 (A) The power to vote or to direct the vote of the pledged
36 ownership interest; or

37 (B) The power to dispose or direct the disposition of the pledged
38 ownership interest, other than the grant of such power(s) pursuant to

1 a pledge agreement under which credit is extended and in which the
2 pledgee is a broker or dealer.

3 (9) "Capitalization" means the recording of an expenditure as an
4 asset.

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

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

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

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

16 (14) "Entity" means an individual, partnership, corporation, or any
17 other association of individuals capable of entering enforceable
18 contracts.

19 (15) "Equity" means the net book value of all tangible and
20 intangible assets less the recorded value of all liabilities, as
21 recognized and measured in conformity with generally accepted
22 accounting principles.

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

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

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

34 (19) "Generally accepted accounting principles" means accounting
35 principles approved by the financial accounting standards board (FASB).

36 (20) "Generally accepted auditing standards" means auditing
37 standards approved by the American institute of certified public
38 accountants (AICPA).

1 (21) "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 (22) "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 (23) "Imprest fund" means a fund which is regularly replenished in
8 exactly the amount expended from it.

9 (24) "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 (25) "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 (26) "Medical care program" means medical assistance provided under
27 RCW 74.09.500 or authorized state medical care services.

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

31 (28) "Net book value" means the historical cost of an asset less
32 accumulated depreciation.

33 (29) "Net invested funds" means the net book value of tangible
34 fixed assets employed by a contractor to provide services under the
35 medical care program, including land, buildings, and equipment as
36 recognized and measured in conformity with generally accepted
37 accounting principles, plus an allowance for working capital which
38 shall be five percent of the product of the per patient day rate

1 multiplied by the prior calendar year reported total patient days of
2 each contractor.

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

6 (31) "Owner" means a sole proprietor, general or limited partners,
7 and beneficial interest holders of five percent or more of a
8 corporation's outstanding stock.

9 (32) "Ownership interest" means all interests beneficially owned by
10 a person, calculated in the aggregate, regardless of the form which
11 such beneficial ownership takes.

12 (33) "Patient day" or "~~((client))~~ resident day" means a calendar
13 day of care provided to a nursing facility resident, which will include
14 the day of admission and exclude the day of discharge; except that,
15 when admission and discharge occur on the same day, one day of care
16 shall be deemed to exist. A "client day" or "recipient day" means a
17 calendar day of care provided to a medical care recipient determined
18 eligible by the department for services provided under chapter 74.09
19 RCW, subject to the same conditions regarding admission and discharge
20 applicable to a patient day or resident day of care.

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

31 (35) "Qualified therapist" means:

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

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

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

38 (d) A mental retardation professional who is either a qualified
39 therapist or a therapist approved by the department who has had

1 specialized training or one year's experience in treating or working
2 with the mentally retarded or developmentally disabled;

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

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

7 (g) A physical therapist as defined by chapter 18.74 RCW;

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

11 (i) A respiratory care practitioner certified under chapter 18.89
12 RCW.

13 (36) "Questioned costs" means those costs which have been
14 determined in accordance with generally accepted accounting principles
15 but which may constitute disallowed costs or departures from the
16 provisions of this chapter or rules and regulations adopted by the
17 department.

18 (37) "Rebased rates" or "cost-rebased rates" mean facility-specific
19 rates commencing July 1 of the first fiscal year of the four-year rate
20 cycle that are established on adjusted or audited, or both, costs
21 reported for the calendar year ending eighteen months before July 1 of
22 the first fiscal year.

23 (38) "Records" means those data supporting all financial statements
24 and cost reports including, but not limited to, all general and
25 subsidiary ledgers, books of original entry, and transaction
26 documentation, however such data are maintained.

27 (~~(38)~~) (39) "Related organization" means an entity which is under
28 common ownership and/or control with, or has control of, or is
29 controlled by, the contractor.

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

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

37 (~~(39)~~) (40) "Restricted fund" means those funds the principal
38 and/or income of which is limited by agreement with or direction of the
39 donor to a specific purpose.

1 (~~(40)~~) (41) "Secretary" means the secretary of the department of
2 social and health services.

3 (~~(41)~~) (42) "Title XIX" or "Medicaid" means the 1965 amendments
4 to the social security act, P.L. 89-07, as amended.

5 (~~(42)~~) (43) "Physical plant capital improvement" means a
6 capitalized improvement that is limited to an improvement to the
7 building or the related physical plant.

8 **Sec. 73.** RCW 74.46.105 and 1985 c 361 s 10 are each amended to
9 read as follows:

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

21 (1) Each year the department will provide for field audit of the
22 cost report, statistical reports, and patient trust funds, as
23 established by RCW 74.46.700, of all or a sample of reporting
24 facilities selected by profiles of costs, exceptions, contract
25 terminations, upon special requests or other factors determined by the
26 department.

27 (2) Beginning with audits for calendar year (~~(1983, up to one~~
28 ~~hundred percent of contractors cost reports and patient care trust fund~~
29 ~~accounts shall be audited: PROVIDED, That each contractor shall be~~
30 ~~audited at least once in every three year period)) 1993, contractors'
31 cost reports and resident care trust fund accounts shall be audited
32 periodically as determined necessary by the department.~~

33 (3) Facilities (~~(shall be selected for sample audits within one~~
34 ~~hundred twenty days of submission of a correct and complete cost~~
35 ~~report, and)) shall be (~~(so)~~) informed of the department's intent to
36 audit at least ten working days before the commencement of an audit of
37 a facility's cost report or resident trust fund accounts. ((Audits so
38 ~~scheduled shall be completed within one year of selection.))~~~~

1 (4) Where an audit for a recent reporting or trust fund period
2 discloses material discrepancies, undocumented costs or mishandling of
3 patient trust funds, auditors may examine prior unaudited periods, for
4 indication of similar material discrepancies, undocumented costs or
5 mishandling of patient trust funds for not more than two reporting
6 periods preceding the facility reporting period selected in the sample.

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

12 (6) Audits shall meet generally accepted auditing standards as
13 promulgated by the American institute of certified public accountants
14 and the standards for audit of governmental organizations, programs,
15 activities and functions as published by the comptroller general of the
16 United States. Audits shall be supervised or reviewed by a certified
17 public accountant.

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

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

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

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

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

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

36 **Sec. 74.** RCW 74.46.115 and 1983 1st ex.s. c 67 s 6 are each
37 amended to read as follows:

1 The office of the state auditor shall (~~annually~~) at least once in
2 every three state fiscal years commencing July 1, 1995, review the
3 performance of the department to ensure that departmental audits are
4 conducted in accordance with generally accepted (~~accounting principles~~
5 ~~and~~) auditing standards.

6 **Sec. 75.** RCW 74.46.160 and 1985 c 361 s 12 are each amended to
7 read as follows:

8 (1) Within one hundred twenty days after receipt of the proposed
9 preliminary settlement, the department shall verify the accuracy of the
10 proposal and shall issue a preliminary settlement report by cost center
11 to the contractor which fully substantiates disallowed costs, refunds,
12 underpayments, or adjustments to the proposed preliminary settlement.

13 (2) After completion of the audit process, including exhaustion or
14 mutual termination of (~~reviews and~~) any administrative appeals (~~of~~)
15 or exception procedure used by the contractor to contest audit findings
16 or determinations, but not including any judicial review available to
17 and commenced by the contractor, the department will submit a final
18 settlement report by cost center to the contractor which fully
19 substantiates disallowed costs, refunds, underpayments, or adjustments
20 to the contractor's cost report. (~~Where the contractor is pursuing~~
21 ~~judicial or administrative review or appeal in good faith regarding~~
22 ~~audit findings or determinations, the department may issue a partial~~
23 ~~final settlement to recover overpayments based on audit adjustments not~~
24 ~~in dispute.))~~

25 **Sec. 76.** RCW 74.46.170 and 1983 1st ex.s. c 67 s 10 are each
26 amended to read as follows:

27 (1) A contractor shall have (~~thirty~~) a period of days, to be
28 established by the department in rule, after the date the preliminary
29 or final settlement report is submitted to the contractor to contest a
30 settlement determination under the administrative appeals or exception
31 procedure established by the department pursuant to RCW 74.46.780. Any
32 such administrative review of a settlement shall be limited to
33 calculation of the settlement or the application of settlement
34 principles and rules, or both, and shall not examine or reexamine
35 payment rate or audit issues. After the (~~thirty-day~~) period
36 established by the department in rule has expired, a preliminary or
37 final settlement will not be subject to review.

1 (2) A preliminary settlement report as issued by the department
2 will become the final settlement report if no audit has been scheduled
3 within twelve calendar months following the department's issuance of a
4 preliminary settlement report to the contractor.

5 (3) A settlement will be reopened if necessary to make adjustments
6 for findings resulting from an audit performed pursuant to RCW
7 74.46.105(4).

8 **Sec. 77.** RCW 74.46.180 and 1993 sp.s. c 13 s 2 are each amended to
9 read as follows:

10 (1) The ~~((state))~~ department shall make payment of any
11 underpayments to which a contractor is entitled as determined by the
12 department under the provisions of this chapter within ~~((thirty))~~ sixty
13 days after the date the preliminary or final settlement report is
14 submitted to the contractor and the department shall pay interest at
15 the rate of one percent per month on any unpaid preliminary or final
16 settlement balance still due the contractor after such time, accruing
17 from sixty days after the preliminary or final settlement report is
18 submitted to the contractor, and no interest shall accrue or be paid
19 for any period prior to this date: PROVIDED, That any increase in a
20 preliminary or final settlement amount due the contractor resulting
21 from a final administrative or judicial decision shall also bear
22 interest until paid at the rate of one percent per month, accruing from
23 sixty days after the preliminary or final settlement was submitted to
24 the contractor. The department shall pay no interest on amounts due a
25 contractor other than amounts determined by preliminary or final
26 settlement as provided in this subsection.

27 (2) A contractor found, under a preliminary or final settlement
28 issued by the department, to have received either overpayments or
29 erroneous payments ~~((under a preliminary or final settlement))~~, to
30 which the contractor is not entitled as determined by the department
31 under the provisions of this chapter, shall refund such erroneous
32 payments or overpayments to the ~~((state))~~ department within ~~((thirty))~~
33 sixty days after the date the preliminary or final settlement report is
34 submitted to the contractor, subject to the provisions of subsections
35 (3), (4), and ~~((+7))~~ (6) of this section, PROVIDED, That for all
36 preliminary or final settlements issued on and after July 1, 1995,
37 regardless of what period a settlement covers, neither a timely filed
38 request to pursue the department's administrative appeals or exception

1 procedure nor commencement of judicial review, as may be available to
2 the contractor in law, contesting the settlement, erroneous payments or
3 overpayments shall delay recovery. A contractor shall pay interest at
4 the rate of one percent per month on any unpaid preliminary or final
5 settlement balance still due the department sixty days after the
6 preliminary or final settlement report is submitted to the contractor,
7 accruing from this date: PROVIDED Further, That the department shall
8 refund interest collected for preliminary and settlement amounts the
9 contractor was entitled to retain as subsequently determined by final
10 administrative or judicial decision.

11 (3) Within the cost centers of nursing services and food, all
12 savings resulting from the respective allowable costs being lower than
13 the respective reimbursement rate paid to the contractor during the
14 report period shall be refunded to the department. However, in
15 computing a preliminary or final settlement, savings in a cost center
16 may be shifted to cover a deficit in another cost center up to the
17 amount of any savings. Not more than twenty percent of the rate in a
18 cost center may be shifted into that cost center and no shifting may be
19 made into the property cost center. There shall be no shifting out of
20 nursing services, and savings in food shall be shifted only to cover
21 deficits in the nursing services cost center. There shall be no
22 shifting from the operational to the administrative cost center.

23 (4) Within the administrative and property cost centers, the
24 contractor shall retain at least fifty percent, but not more than
25 seventy-five percent, of any savings resulting from the respective
26 audited allowable costs being lower than the respective reimbursement
27 rates paid to the contractor during the report period multiplied by the
28 number of authorized medical care client days in which said rates were
29 in effect, except that no savings may be retained if reported costs in
30 the administrative and property cost centers exceed audited allowable
31 costs in these cost areas by a total of ten cents or more per patient
32 day. The secretary, by rule, shall establish the basis for the
33 specific percentages of savings to the contractors. Such rules may
34 provide for differences in the percentages allowed for each cost center
35 to individual facilities based on performance measures related to
36 administrative efficiency.

37 (5) All return on investment rate payments provided by RCW
38 74.46.530 shall be retained by the contractor to the extent net
39 invested funds are substantiated by department field audit. Any

1 industrial insurance dividend or premium discount under RCW 51.16.035
2 shall be retained by the contractor to the extent that such dividend or
3 premium discount is attributable to the contractor's private patients.

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

7 (a) Deduct the amount of refund due the department, plus any
8 interest accrued under ~~((RCW 43.20B.695))~~ subsection (2) of this
9 section, from payment amounts due the contractor; or

10 (b) In the instance the contract has been terminated, (i) deduct
11 the amount of refund due the department, plus interest assessed at the
12 rate and in the manner provided in ~~((RCW 43.20B.695))~~ subsection (2) of
13 this section, from any payments due; or (ii) recover the amount due,
14 plus any interest assessed under RCW 43.20B.695, from security posted
15 with or otherwise obtained by the department or by any other lawful
16 means.

17 ~~((Where the facility is pursuing timely filed judicial or~~
18 ~~administrative remedies in good faith regarding settlement issues, the~~
19 ~~contractor need not refund nor shall the department withhold from the~~
20 ~~facility current payment amounts the department claims to be due from~~
21 ~~the facility but which are specifically disputed by the contractor.))~~
22 For all erroneous payments and overpayments determined by preliminary
23 or final settlements issued before July 1, 1995, and not yet recovered
24 by the department because they are specifically disputed by the
25 contractor in a timely filed administrative or judicial review, if the
26 judicial or administrative remedy sought by the facility is not granted
27 after all appeals are exhausted or mutually terminated, the facility
28 shall make payment of such amounts due plus interest accrued from the
29 date of filing of the appeal, as payable on judgments, within sixty
30 days of the date such decision is made.

31 **Sec. 78.** RCW 74.46.370 and 1980 c 177 s 37 are each amended to
32 read as follows:

33 (1) Except for new buildings, the contractor shall use lives which
34 reflect the estimated actual useful life of the asset and which shall
35 be no shorter than guideline lives as established by the department.
36 The shortest life which may be used for new buildings is thirty years.
37 Lives shall be measured from the date on which the assets were first
38 used in the medical care program or from the date of the most recent

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

6 (2) Building improvements that extend the remaining useful life of
7 a building shall be depreciated over the remaining useful life of the
8 building, as modified by the improvement. Building improvements that
9 do not extend the remaining useful life of a building shall be
10 depreciated over the estimated useful life of the improvement or
11 improved asset as promulgated by the current edition of Estimated
12 Useful Lives of Depreciable Hospital Assets published by the American
13 Hospital Association. Should the American Hospital Association cease
14 to publish estimated useful lives of hospital assets in the future, the
15 department may in regulation select similar guidelines from an
16 alternate source.

17 (3) Improvements to leased property which are the responsibility of
18 the contractor under the terms of the lease that extend the remaining
19 useful life of a building shall be depreciated over the remaining
20 useful life of the building as modified by the improvement, as
21 authorized in subsection (2) of this section for nonleased property.
22 Improvements to leased property which are the responsibility of the
23 contractor under the terms of the lease that do not extend the
24 remaining useful life of a building shall be depreciated over the
25 estimated useful life of the improvement or improved asset utilizing
26 the same American Hospital Association guidelines authorized in
27 subsection (2) of this section for nonleased property.

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

30 **Sec. 79.** RCW 74.46.420 and 1993 sp.s. c 13 s 7 are each amended to
31 read as follows:

32 The following principles are inherent in RCW 74.46.430 through
33 74.46.590:

34 (1) ~~((Reimbursement))~~ Effective July 1, 1995, nursing facility
35 payment rates will be set prospectively on a per ((patient)) resident
36 day basis ((on)) utilizing a ((two-year)) four-year rate cycle system
37 corresponding to ((each)) the four fiscal years within two consecutive
38 state ((biennium;—and)) biennia, however, the two state biennia

1 extending from July 1, 1993, to June 30, 1997, shall be utilized as the
2 chronological framework for the initial four-year rate cycle, as if the
3 cycle had commenced July 1, 1993. Because the four-year system will
4 commence July 1, 1995, at the mid-point of the initial cycle, rates
5 commencing July 1, 1995, shall represent third fiscal year rates, and
6 rates commencing July 1, 1996, shall represent fourth fiscal year
7 rates.

8 (2) ~~((The rates, in the nursing services, food, administrative, and~~
9 ~~operational cost centers, shall be adjusted downward or upward when set~~
10 ~~effective July 1 of the first fiscal year of the two year rate setting~~
11 ~~cycle and adjusted again downward or upward effective July 1 of the~~
12 ~~second fiscal year of the rate setting cycle for economic trends and~~
13 ~~conditions.))~~ For the first fiscal year of each four-year rate cycle,
14 beginning July 1, 1997, component rates in the nursing services, food,
15 administrative, and operational cost centers will be cost-rebased
16 utilizing desk-reviewed or audited, or both, costs reported for the
17 calendar year ending eighteen months before the July 1 commencement of
18 each such first fiscal year. Such first fiscal year component rates
19 shall also be adjusted downward or upward for economic trends and
20 conditions as provided in this section.

21 (3) ~~((The July 1 rates for the first year of each biennium shall be~~
22 ~~adjusted by the change in the implicit price deflator for personal~~
23 ~~consumption expenditures index published by the bureau of labor~~
24 ~~statistics of the United States department of labor.~~

25 The period used to measure the increase or decrease to be applied
26 to these first year biennial rates shall be the calendar year preceding
27 the July 1 commencement of the state biennium.)) For the second,
28 third, and fourth fiscal years of each four-year rate cycle, component
29 rates in the nursing services, food, administrative, and operational
30 cost centers, shall not be cost-rebased, but shall be adjusted downward
31 or upward for economic trends and conditions as provided in this
32 section.

33 (4) ~~((The July 1))~~ Cost-rebased rates ~~((for the second year of each~~
34 ~~biennium))~~ commencing July 1 of the first fiscal year of each four-year
35 rate cycle, beginning July 1, 1997, shall be adjusted downward or
36 upward in the nursing services, food, administrative, and operational
37 cost centers by ((the)) a twenty-four-month change in the nursing home
38 input price index without capital costs published by the health care
39 financing administration of the department of health and human

1 services, ~~the HCFA index~~((, however, any increase shall be multiplied
2 by one and one-half)). The period to be used to measure the HCFA index
3 increase or decrease to be ((multiplied by one and one-half and))
4 applied ((or decrease to be applied)) to these ((second-year biennial))
5 first fiscal year rate((s)) components shall ((also)) be the ((calendar
6 year preceding the July 1 commencement of the state biennium:
7 PROVIDED, However, That in the event the change in the HCFA index
8 measured over the following calendar year, the one terminating six
9 months after the start of the state biennium, is twenty-five percent
10 greater or less than the change in the HCFA index measured over the
11 calendar year preceding commencement of the state biennium, the
12 department shall use the HCFA index increase multiplied by one and one-
13 half or decrease in such following calendar year to inflate or decrease
14 nursing facilities' nursing services, food, administrative, and
15 operational rates for July 1 of the second biennial year)) twenty-four-
16 month period ending six months before July 1 of the first fiscal year
17 of each four-year rate cycle.

18 (5) Rates not cost-rebased, commencing July 1 of the second, third,
19 and fourth fiscal years of each four-year rate cycle, shall be
20 increased or decreased in the nursing services, food, administrative,
21 and operational cost center components by a twelve-month change in the
22 HCFA index. The periods used to measure the HCFA index increase or
23 decrease to be applied to the second, third, and fourth fiscal year
24 rates shall be as follows:

25 (a) For second fiscal year rates, the HCFA index period shall be
26 the twelve months ending eighteen months before the July 1 start of the
27 second fiscal year. In the event the change in the index measured over
28 the following twelve months, ending six months before the July 1 start
29 of the second fiscal year, is twenty-five percent greater or less than
30 the change in the HCFA index measured over the twelve months ending
31 eighteen months before the second fiscal year, the department shall use
32 the HCFA index increase or decrease in such following twelve-month
33 period.

34 (b) For third fiscal year rates, the HCFA index period shall be the
35 twelve months ending six months before the July 1 start of the third
36 fiscal year.

37 (c) For fourth fiscal year rates, the HCFA index period shall be
38 the twelve months ending eighteen months before the July 1 start of the
39 fourth fiscal year. In the event the change in the HCFA index measured

1 over the following twelve months, ending six months before the July 1
2 start of the fourth fiscal year, is twenty-five percent greater or less
3 than the change in the HCFA index measured over the twelve months
4 ending eighteen months before the fourth fiscal year, the department
5 shall use the HCFA index increase or decrease in such following twelve-
6 month period.

7 (6) Therefore, subject to the provisions contained in subsection
8 (5) (a) and (c) of this section regarding possible changes in the HCFA
9 index affecting the index periods to be used for second and fourth
10 fiscal year rates, the HCFA index periods to be used for July 1 rates
11 not cost-rebased, to adjust them for economic trends and conditions,
12 shall be as follows:

13 (a) July 1, 1995 -- December 31, 1993, to December 31, 1994;

14 (b) July 1, 1996 -- December 31, 1993, to December 31, 1994;

15 (c) July 1, 1998 -- December 31, 1995, to December 31, 1996;

16 (d) July 1, 1999 -- December 31, 1997, to December 31, 1998;

17 (e) July 1, 2000 -- December 31, 1997, to December 31, 1998; and

18 (f) July 1, 2002 -- December 31, 1999, to December 31, 2000.

19 (7) For all rates effective on and after July 1, 1995, the
20 department shall follow the four-year cycle of rebasing and shall make
21 adjustments for economic trends and conditions utilizing the principles
22 and index periods set forth in this section. If (~~either the implicit~~
23 price deflator index or)) the health care financing administration
24 index specified in this section ceases to be published in the future,
25 the department shall select by rule and use in (~~their~~) its place
26 (~~one or more~~) another measure(~~s~~) of change from the same or an
27 alternate source (~~or sources for~~) using the same or comparable time
28 periods.

29 **Sec. 80.** RCW 74.46.430 and 1993 sp.s. c 13 s 8 are each amended to
30 read as follows:

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

36 (2) (~~As required,~~) The department may modify such maximum per
37 (~~patient~~) resident day rates pursuant to the administrative (~~review~~

1 ~~provisions of))~~ appeals or exception procedure authorized by RCW
2 74.46.780.

3 (3) The maximum prospective reimbursement rates for the
4 administrative, operational, and property cost centers, and the return
5 on investment rate shall be established based upon a minimum facility
6 occupancy level of eighty-five percent.

7 (4) All contractors shall be required to adjust and maintain wages
8 for all employees to a minimum hourly wage of four dollars and seventy-
9 six cents per hour beginning January 1, 1988, and five dollars and
10 fifteen cents per hour beginning January 1, 1989.

11 **Sec. 81.** RCW 74.46.450 and 1993 sp.s. c 13 s 9 are each amended to
12 read as follows:

13 (1) Prospective reimbursement rates for a new contractor will be
14 established within sixty days following receipt by the department of
15 the properly completed projected budget required by RCW 74.46.670.
16 Such reimbursement rates will become effective as of the effective date
17 of the contract and shall remain in effect until adjusted or reset as
18 provided in this chapter.

19 (2) Such reimbursement rates will be based on the contractor's
20 projected cost of operations and on costs and payment rates of the
21 prior contractor, if any, or of other contractors in comparable
22 circumstances.

23 (3) If a properly completed budget is not received at least sixty
24 days prior to the effective date of the contract, the department will
25 establish preliminary rates based on the other factors specified in
26 subsection (2) of this section. These preliminary rates will remain in
27 effect until adjusted or reset as provided in this chapter.

28 (4) The department is authorized to develop policies and procedures
29 in rule to address the computation of rates and rate adjustments
30 authorized by RCW 74.46.420 for economic trends and conditions for the
31 first, second, third, and ((second)) fourth fiscal years of each
32 ((biennium, including steps necessary to prorate rate adjustments for
33 economic trends and conditions as authorized in RCW 74.46.420, for
34 contractors having less than twelve months of cost report data for the
35 prior calendar year)) four-year rate cycle.

36 **Sec. 82.** RCW 74.46.460 and 1993 sp.s. c 13 s 10 are each amended
37 to read as follows:

1 (1) Each contractor's (~~reimbursement~~) component payment rates
2 (~~will~~) shall be determined or adjusted for economic trends and
3 conditions prospectively at least once during each calendar year, as
4 provided in this chapter, to be effective July (~~1st~~) 1. Provided,
5 that, except for the rates of new contractors as defined by the
6 department, a contractor's cost-rebased rate for the first fiscal year
7 of each (~~biennium~~) four-year rate cycle must be established upon its
8 own (~~prior calendar period~~) cost report of at least six months of
9 adjusted or audited, or both, cost data from the calendar year ending
10 eighteen months prior to the July 1 commencement of the first fiscal
11 year rebased rate.

12 (2) Rates may be adjusted as determined by the department to take
13 into account variations in the distribution of patient classifications
14 or changes in patient characteristics from the prior reporting year,
15 program changes required by the department, or changes in staffing
16 levels at a facility required by the department. Rates may also be
17 adjusted to cover costs associated with placing a nursing home in
18 receivership which costs are not covered by the rate of the former
19 contractor, including: Compensation of the receiver, reasonable
20 expenses of receivership and transition of control, and costs incurred
21 by the receiver in carrying out court instructions or rectifying
22 deficiencies found. Rates shall be adjusted for any capitalized
23 additions or replacements made as a condition for licensure or
24 certification. Rates shall be adjusted for capitalized improvements
25 done under RCW 74.46.465.

26 **Sec. 83.** RCW 74.46.470 and 1993 sp.s. c 13 s 11 are each amended
27 to read as follows:

28 (1) A contractor's (~~reimbursement~~) per resident day component
29 payment rates for medical care recipients (~~will~~) shall be determined
30 utilizing net invested funds and desk-reviewed or audited cost report
31 data, or both, within the following cost centers:

- 32 (a) Nursing services;
- 33 (b) Food;
- 34 (c) Administrative;
- 35 (d) Operational; and
- 36 (e) Property.

37 (2) There shall be for the time period January 1988 through June
38 1990 only an enhancement cost center established to reimburse

1 contractors for specific legislatively authorized enhancements for
2 nonadministrative wages and benefits to ensure that such enhancements
3 are used exclusively for the legislatively authorized purposes. For
4 purposes of settlement, funds appropriated to this cost center shall
5 only be used for expenditures for which the legislative authorization
6 is granted. Such funds may be used only in the following
7 circumstances:

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

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

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

18 (4) For purposes of this section, "nonadministrative wages and
19 benefits" means wages and payroll taxes paid with respect to, and the
20 employer share of the cost of benefits provided to, employees in job
21 classes specified in an appropriation, which may not include
22 administrators, assistant administrators, or administrators in
23 training.

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

27 **Sec. 84.** RCW 74.46.481 and 1993 sp.s. c 13 s 12 are each amended
28 to read as follows:

29 (1) The nursing services cost center shall include for reporting
30 and audit purposes all costs related to the direct provision of nursing
31 and related care, including fringe benefits and payroll taxes for the
32 nursing and related care personnel, and the cost of nursing supplies.
33 The department shall adopt by administrative rule a definition of
34 "related care". For rates effective after June 30, 1991, nursing
35 services costs, as reimbursed within this chapter, shall not include
36 costs of any purchased nursing care services, including registered
37 nurse, licensed practical nurse, and nurse assistant services, obtained
38 through service contract arrangement in excess of the amount of

1 compensation paid for such hours of nursing care service had they been
2 paid at the average hourly wage, including related taxes and benefits,
3 for in-house nursing care staff of like classification at the same
4 nursing facility, as reported in the most recent cost report period.

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

8 (3) Utilizing regression or other statistical technique, the
9 department shall determine a reasonable limit on facility nursing staff
10 taking into account facility patient characteristics. For purposes of
11 this section, facility nursing staff refers to registered nurses,
12 licensed practical nurses and nursing assistants employed by the
13 facility or obtained through temporary labor contract arrangements.
14 Effective January 1, 1988, the hours associated with the training of
15 nursing assistants and the supervision of that training for nursing
16 assistants shall not be included in the calculation of facility nursing
17 staff. In selecting a measure of patient characteristics, the
18 department shall take into account:

19 (a) The correlation between alternative measures and facility
20 nursing staff; and

21 (b) The cost of collecting information for and computation of a
22 measure.

23 If regression is used, the limit shall be set at predicted nursing
24 staff plus 1.75 regression standard errors. If another statistical
25 method is utilized, the limit shall be set at a level corresponding to
26 1.75 standard errors above predicted staffing computed according to a
27 regression procedure. A regression calculated shall be effective for
28 the entire biennium.

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

36 (5) Every ~~((two))~~ four years, beginning with July 1, 1997, rates,
37 when rates are set at the beginning of each new ~~((biennium))~~ four-year
38 rate cycle, the department shall divide into two peer groups nursing
39 facilities located in the state of Washington providing services to

1 medicaid residents: (a) Those facilities located within a metropolitan
2 statistical area as defined and determined by the United States office
3 of management and budget or other applicable federal office and (b)
4 those not located in such an area. The facilities in each peer group
5 shall then be arrayed from lowest to highest by magnitude of per
6 ((patient)) resident day adjusted or audited, or both, nursing services
7 cost from the ((prior)) calendar report year ending eighteen months
8 before the July 1 commencement of the first fiscal year cost-rebased
9 rates, regardless of whether any such adjustments are contested by the
10 nursing facility, and the median or fiftieth percentile cost for each
11 peer group shall be determined. Nursing services component rates for
12 facilities within each peer group for the first fiscal year of ((the
13 biennium)) each four-year rate cycle shall be set at the lower of the
14 facility's adjusted or audited, or both, per ((patient)) resident day
15 nursing services cost from the ((prior)) report period for the calendar
16 year ending eighteen months before the July 1 commencement of the first
17 fiscal year rates or the median cost for the facility's peer group plus
18 twenty-five percent utilizing the same calendar year report data.
19 Therefore, for July 1, 1997, cost-rebased rates, the adjusted or
20 audited, or both, cost report data utilized shall be from calendar year
21 1995 and for July 1, 2001, cost-rebased rates the adjusted or audited,
22 or both, cost report data utilized shall be from calendar year 1999.
23 This rate shall be reduced or inflated as authorized by RCW 74.46.420.
24 However, the per patient day peer group median cost plus twenty-five
25 percent limit shall not apply to the nursing services cost center
26 reimbursement rate only for the pilot facility especially designed to
27 meet the needs of persons living with AIDS as defined by RCW 70.24.017
28 and specifically authorized for this purpose under the 1989 amendment
29 to the Washington state health plan.

30 (6) ~~((If a nursing facility is impacted by the limit authorized in~~
31 ~~subsection (5) of this section, it shall not receive a prospective rate~~
32 ~~in nursing services for July 1, 1993, less than the same facility's~~
33 ~~prospective rate in nursing services as of June 30, 1993, adjusted by~~
34 ~~any increase in the implicit price deflator for personal consumption~~
35 ~~expenditures, IPD index, as measured over the period authorized by RCW~~
36 ~~74.46.420(3).~~

37 (7)) Beginning with July 1, 1995, rates, the third fiscal year
38 rate of the initial four-year rate cycle, a nursing facility's
39 nonrebased component rate in nursing services for the second, third,

1 and fourth years of each ((biennium)) four-year rate cycle shall be
2 that facility's nursing services component rate ((as of July 1 of the
3 first year of that biennium)) existing on June 30 immediately before
4 the July 1 commencement of each nonrebased fiscal year rate period,
5 reduced or inflated as authorized by RCW 74.46.420. The
6 ~~((alternating))~~ rebased and nonrebased rate-setting procedures
7 ~~((prescribed))~~ described in this section and chapter for a facility's
8 ~~((two))~~ four July 1 nursing services rates occurring within each
9 ~~((biennium))~~ four-year rate period shall be followed in the same order
10 for each succeeding ((biennium)) four-year period.

11 ~~((+8))~~ (7) Median cost((s)) limits for peer groups shall be
12 calculated ((initially)) only once as provided in this chapter on the
13 basis of the most recent adjusted cost information available to the
14 department from the calendar cost report year ending eighteen months
15 prior to ((the calculation of the new rate for)) July 1 of the first
16 fiscal year of each ((biennium)) four-year rate cycle, regardless of
17 whether the adjustments are contested or subject to pending
18 administrative or judicial review. ((Median costs for peer groups
19 shall be recalculated as provided in this chapter on the basis of the
20 most recent adjusted cost information available to the department on
21 October 31 of the first fiscal year of each biennium, and shall apply
22 retroactively to the prior July 1 rate, regardless of whether the
23 adjustments are contested or subject to pending administrative or
24 judicial review.)) Median cost((s)) limits, once calculated, shall not
25 be adjusted to reflect subsequent administrative or judicial rulings,
26 whether final or not.

27 ~~((+9))~~ The department is authorized to determine on a systematic
28 basis facilities with unmet patient care service needs. The department
29 may increase the nursing services cost center prospective rate for a
30 facility beyond the level determined in accordance with subsection (6)
31 of this section if the facility's actual and reported nursing staffing
32 is one standard error or more below predicted staffing as determined
33 according to the method selected pursuant to subsection (3) of this
34 section and the facility has unmet patient care service needs:
35 PROVIDED, That prospective rate increases authorized by this subsection
36 shall be funded only from legislative appropriations made for this
37 purpose during the periods authorized by such appropriations or other
38 laws and the increases shall be conditioned on specified improvements
39 in patient care at such facilities.

1 ~~(10))~~ (8) The department shall establish a method for identifying
2 patients with exceptional care requirements and a method for
3 establishing or negotiating on a consistent basis rates for such
4 patients.

5 ~~((11))~~ (9) The department, in consultation with interested
6 parties, shall adopt rules to establish the criteria the department
7 will use in reviewing any requests by a contractor for a prospective
8 rate adjustment to be used to increase the number of nursing staff.
9 These rules shall also specify the time period for submission and
10 review of staffing requests: PROVIDED, That a decision on a staffing
11 request shall not take longer than sixty days from the date the
12 department receives such a complete request. In establishing the
13 criteria, the department may consider, but is not limited to, the
14 following:

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

18 (b) Staffing patterns for similar facilities in the same peer
19 group;

20 (c) Physical plant of contractor; and

21 (d) Survey, inspection of care, and department consultation
22 results.

23 **Sec. 85.** RCW 74.46.490 and 1993 sp.s. c 13 s 13 are each amended
24 to read as follows:

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

28 (2) Every ~~((two))~~ four years, beginning with July 1, 1997, rates,
29 when rates are set at the beginning of each new ~~((biennium))~~ four-year
30 rate cycle, the department shall divide into two peer groups nursing
31 facilities located in the state of Washington providing services to
32 medicaid residents: (a) Those facilities located within a metropolitan
33 statistical area as defined and determined by the United States office
34 of management and budget or other applicable federal office and (b)
35 those not located in such an area. The facilities in each peer group
36 shall then be arrayed from lowest to highest by magnitude of per
37 ~~((patient))~~ resident day adjusted or audited, or both, food cost from
38 the ~~((prior))~~ calendar report year ending eighteen months before the

1 July 1 commencement of the first fiscal year cost-rebased rates,
2 regardless of whether any such adjustments are contested by the nursing
3 facility, and the median or fiftieth percentile cost for each peer
4 group shall be determined. Food component rates for facilities within
5 each peer group for the first fiscal year of ((the biennium)) each
6 four-year rate cycle shall be set at the lower of the facility's
7 adjusted or audited, or both, per ((patient)) resident day food cost
8 from the ((prior)) report period for the calendar year ending eighteen
9 months before the July 1 commencement of the first fiscal year rates or
10 the median cost for the facility's peer group plus twenty-five percent
11 utilizing the same calendar year report data. Therefore, for July 1,
12 1997, cost-rebased rates the adjusted or audited, or both, cost report
13 data utilized shall be from calendar year 1995 and for July 1, 2001,
14 cost-rebased rates the adjusted or audited, or both, cost report data
15 utilized shall be from calendar year 1999. This rate shall be reduced
16 or inflated as authorized by RCW 74.46.420.

17 (3) Beginning with July 1, 1995, rates, the third fiscal year rate
18 of the initial four-year rate cycle, a nursing facility's nonrebased
19 food component rate for the second, third, and fourth years of each
20 ((biennium)) four-year rate cycle shall be that facility's food
21 component rate ((as of July 1 of the first year of that biennium))
22 existing on June 30 immediately before the July 1 commencement of each
23 nonbased fiscal year rate period, reduced or inflated as authorized by
24 RCW 74.46.420. The ((alternating)) rebase and nonrebase ratesetting
25 procedures ((prescribed)) described in this section and chapter for a
26 facility's ((two)) four July 1 food rates occurring within each
27 ((biennium)) four-year rate period shall be followed in the same order
28 for each succeeding ((biennium)) four-year period.

29 (4) Median cost((s)) limits for peer groups shall be calculated
30 ((initially)) only once as provided in this chapter on the basis of the
31 most recent adjusted cost information available to the department from
32 the calendar cost report year ending eighteen months prior to ((the
33 calculation of the new rate for)) July 1 of the first fiscal year of
34 each ((biennium)) four-year rate cycle, regardless of whether the
35 adjustments are contested or subject to pending administrative or
36 judicial review. ((Median costs for peer groups shall be recalculated
37 as provided in this chapter on the basis of the most recent adjusted
38 cost information available to the department on October 31 of the first
39 fiscal year of each biennium, and shall apply retroactively to the

1 prior July 1 rate, regardless of whether the adjustments are contested
2 or subject to pending administrative or judicial review.)) Median
3 cost((s)) limits, once calculated, shall not be adjusted to reflect
4 subsequent administrative or judicial rulings, whether final or not.

5 **Sec. 86.** RCW 74.46.500 and 1993 sp.s. c 13 s 14 are each amended
6 to read as follows:

7 (1) The administrative cost center shall include for cost reporting
8 purposes all administrative, oversight, and management costs whether
9 facility on-site or allocated in accordance with a department-approved
10 joint-cost allocation methodology. Such costs shall be identical to
11 the cost report line item costs categorized under "general and
12 administrative" in the "administration and operations" combined cost
13 center existing prior to January 1, 1993, except for nursing supplies
14 and purchased medical records.

15 (2) Every ((two)) four years, beginning with July 1, 1997, rates,
16 when rates are set at the beginning of each new ((biennium)) four-year
17 rate cycle, the department shall divide into two peer groups nursing
18 facilities located in the state of Washington providing services to
19 medicaid residents: (a) Those facilities located within a metropolitan
20 statistical area as defined and determined by the United States office
21 of management and budget or other applicable federal office and (b)
22 those not located in such an area. The facilities in each peer group
23 shall then be arrayed from lowest to highest by magnitude of per
24 ((patient)) resident day adjusted or audited, or both, administrative
25 cost from the ((prior)) calendar report year ending eighteen months
26 before the July 1 commencement of the first fiscal year cost-rebased
27 rates, regardless of whether any such adjustments are contested by the
28 nursing facility, and the median or fiftieth percentile cost for each
29 peer group shall be determined. Administrative component rates for
30 facilities within each peer group for the first year of ((the
31 biennium)) each four-year rate cycle shall be set at the lower of the
32 facility's adjusted or audited, or both, per ((patient)) resident day
33 administrative cost from the ((prior)) report period for the calendar
34 year ending eighteen months before the July 1 commencement of the first
35 fiscal year rates or the median cost for the facility's peer group plus
36 ten percent utilizing the same calendar year report data. For July 1,
37 1997, cost-rebased rates the adjusted or audited, or both, cost report
38 data utilized shall be from calendar year 1995 and for July 1, 2001,

1 cost-rebased rates the adjusted or audited, or both, cost report data
2 utilized shall be from calendar year 1999. This rate shall be reduced
3 or inflated as authorized by RCW 74.46.420.

4 (3) Beginning with July 1, 1995, rates, the third fiscal year rate
5 of the initial four-year rate cycle, a nursing facility's nonrebased
6 administrative component rate for the second, third, and fourth years
7 of each ((biennium)) four-year double biennial cycle shall be that
8 facility's administrative component rate ((as of July 1 of the first
9 year of that biennium)) existing on June 30 immediately before the July
10 1 commencement of each nonrebased fiscal year rate period, reduced or
11 inflated as authorized by RCW 74.46.420. The ((alternating)) rebase
12 and nonrebase ratesetting procedures ((prescribed)) described in this
13 section and chapter for a facility's ((two)) four July 1 administrative
14 rates occurring within each ((biennium)) four-year rate period shall be
15 followed in the same order for each succeeding ((biennium)) four-year
16 period.

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

32 **Sec. 87.** RCW 74.46.505 and 1993 sp.s. c 13 s 15 are each amended
33 to read as follows:

34 (1) The operational cost center shall include for cost reporting
35 purposes all allowable costs of the daily operation of the facility not
36 included in nursing services and related care, food, administrative, or
37 property costs, whether such costs are facility on-site or allocated in

1 accordance with a department-approved joint-cost allocation
2 methodology.

3 (2) Every ~~((two))~~ four years, beginning with July 1, 1997, rates,
4 when rates are set at the beginning of each new ~~((biennium))~~ four-year
5 rate cycle, the department shall divide into two peer groups nursing
6 facilities located in the state of Washington providing services to
7 medicaid residents: (a) Those facilities located within a metropolitan
8 statistical area as defined and determined by the United States office
9 of management and budget or other applicable federal office and (b)
10 those not located in such an area. The facilities in each peer group
11 shall then be arrayed from lowest to highest by magnitude of per
12 ~~((patient))~~ resident day adjusted or audited, or both, operational cost
13 from the ~~((prior))~~ calendar report year ending eighteen months before
14 the July 1 commencement of the first fiscal year cost-rebased rates,
15 regardless of whether any such adjustments are contested by the nursing
16 facility, and the median or fiftieth percentile cost for each peer
17 group shall be determined. Operational component rates for facilities
18 within each peer group for the first fiscal year of ~~((the biennium))~~
19 each four-year rate cycle shall be set at the lower of the facility's
20 adjusted or audited, or both, per ~~((patient))~~ resident day operational
21 cost from the ~~((prior))~~ report period for the calendar year ending
22 eighteen months before the July 1 commencement of the first fiscal year
23 rates or the median cost for the facility's peer group plus twenty-five
24 percent utilizing the same calendar year report data. For July 1,
25 1997, cost-rebased rates then, the adjusted or audited, or both, cost
26 report data utilized shall be from calendar year 1995 and for July 1,
27 2001, cost-rebased rates the adjusted or audited, or both, cost report
28 data utilized shall be from calendar year 1999. This rate shall be
29 reduced or inflated as authorized by RCW 74.46.420.

30 (3) Beginning with July 1, 1995, rates, the third fiscal year rate
31 of the initial four-year rate cycle, a nursing facility's nonrebased
32 operational component rate for the second, third, and fourth years of
33 each ~~((biennium))~~ four-year rate cycle shall be that facility's
34 operational component rate ~~((as of July 1 of the first year of that~~
35 biennium)) existing on June 30 immediately before the July 1
36 commencement of each nonrebased fiscal year rate period, reduced or
37 inflated as authorized by RCW 74.46.420. The ~~((alternating))~~ rebase
38 and nonrebase ratesetting procedures ~~((prescribed))~~ described in this
39 section and chapter for a facility's ~~((two))~~ four July 1 operational

1 rates occurring within each (~~(biennium)~~) four-year rate period shall be
2 followed in the same order for each succeeding (~~(biennium)~~) four-year
3 period.

4 (4) Median cost(~~(s)~~) limits for peer groups shall be calculated
5 (~~(initially)~~) only once as provided in this chapter on the basis of the
6 most recent adjusted cost information available to the department from
7 the calendar cost report year ending eighteen months prior to (~~(the~~
8 ~~calculation of the new rate for)~~) July 1 of the first fiscal year of
9 each (~~(biennium)~~) four-year double biennial rate cycle, regardless of
10 whether the adjustments are contested or subject to pending
11 administrative or judicial review. (~~(Median costs for peer groups~~
12 ~~shall be recalculated as provided in this chapter on the basis of the~~
13 ~~most recent adjusted cost information available to the department on~~
14 ~~October 31 of the first fiscal year of each biennium, and shall apply~~
15 ~~retroactively to the prior July 1 rate, regardless of whether the~~
16 ~~adjustments are contested or subject to pending administrative or~~
17 ~~judicial review.)~~) Median cost(~~(s)~~) limits, once calculated, shall not
18 be adjusted to reflect subsequent administrative or judicial rulings,
19 whether final or not.

20 **Sec. 88.** RCW 74.46.510 and 1993 sp.s. c 13 s 16 are each amended
21 to read as follows:

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

32 (2) A nursing facility's property rate shall be rebased annually,
33 effective July 1, in accordance with this section and chapter
34 regardless of whether the rate is for the first, second, third, or
35 (~~(second)~~) fourth fiscal year of the (~~(biennium)~~) four-year rate cycle.

36 (3) When a certificate of need for a new facility is requested, the
37 department, in reaching its decision, shall take into consideration

1 per-bed land and building construction costs for the facility which
2 shall not exceed a maximum to be established by the secretary.

3 **Sec. 89.** RCW 74.46.530 and 1993 sp.s. c 13 s 17 are each amended
4 to read as follows:

5 (1) The department shall establish for each medicaid nursing
6 facility a return on investment (ROI) rate composed of two parts: A
7 financing allowance and a variable return allowance. The financing
8 allowance part of a facility's return on investment component rate
9 shall be rebased annually, effective July 1, in accordance with this
10 section and chapter, regardless of whether the rate is for the first,
11 second, third, or ((second)) fourth fiscal year of the ((biennium))
12 four-year rate cycle.

13 (a) The financing allowance shall be determined by multiplying the
14 net invested funds of each facility by .10, and dividing by the
15 contractor's total patient days from the most recent cost report
16 period. If a capitalized addition or retirement of an asset will
17 result in a different licensed bed capacity during the ensuing period,
18 the prior period total patient days used in computing the financing and
19 variable return allowances shall be adjusted to the anticipated patient
20 day level.

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

1 for net invested funds based on an appraisal conducted according to RCW
2 74.46.360(1).

3 (c) In determining the variable return allowance:

4 (i) Every ~~((two))~~ four years at the start of each new ~~((biennium))~~
5 four-year rate cycle, beginning with rates for July 1, 1997, the
6 department, without utilizing peer groups, ~~((will))~~ shall first rank
7 all facilities in numerical order from highest to lowest according to
8 their per ~~((patient))~~ resident day adjusted or audited, or both,
9 allowable costs for nursing services, food, administrative, and
10 operational costs combined as reported by the facility for the
11 ~~((previous))~~ calendar year cost report period ending eighteen months
12 before the July 1 commencement of the first fiscal year in the four-
13 year rate cycle. Therefore, for rates extending from July 1, 1997,
14 through June 30, 2001, the cost data utilized in calculating the
15 variable returns shall be from calendar year 1995 and for rates
16 extending from July 1, 2001, to June 30, 2005, the cost data utilized
17 shall be from calendar year 1999.

18 (ii) The department shall then compute the variable return
19 allowance by multiplying the appropriate percentage amounts, which
20 shall not be less than one percent and not greater than four percent,
21 by the sum of the facility's nursing services, food, administrative,
22 and operational rate components. The percentage amounts will be based
23 on groupings of facilities according to the rankings prescribed in (i)
24 of this subsection (1)(c). The percentages calculated and assigned
25 will remain the same for the next variable return allowance paid in the
26 second, third, and fourth fiscal years of the ~~((biennium))~~ four-year
27 rate cycle. Those groups of facilities with lower per diem costs shall
28 receive higher percentage amounts than those with higher per diem
29 costs.

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

34 (e) In the case of a facility which was leased by the contractor as
35 of January 1, 1980, in an arm's-length agreement, which continues to be
36 leased under the same lease agreement, and for which the annualized
37 lease payment, plus any interest and depreciation expenses associated
38 with contractor-owned assets, for the period covered by the prospective
39 rates, divided by the contractor's total patient days, minus the

1 property cost center determined according to RCW 74.46.510, is more
2 than the return on investment rate determined according to subsection
3 (1)(d) of this section, the following shall apply:

4 (i) The financing allowance shall be recomputed substituting the
5 fair market value of the assets as of January 1, 1982, as determined by
6 the department of general administration through an appraisal
7 procedure, less accumulated depreciation on the lessor's assets since
8 January 1, 1982, for the net book value of the assets in determining
9 net invested funds for the facility. A determination by the department
10 of general administration of fair market value shall be final unless
11 the procedure used to make such determination is shown to be arbitrary
12 and capricious.

13 (ii) The sum of the financing allowance computed under subsection
14 (1)(e)(i) of this section and the variable allowance shall be compared
15 to the annualized lease payment, plus any interest and depreciation
16 associated with contractor-owned assets, for the period covered by the
17 prospective rates, divided by the contractor's total patient days,
18 minus the property cost center rate determined according to RCW
19 74.46.510. The lesser of the two amounts shall be called the alternate
20 return on investment rate.

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

26 (f) In the case of a facility which was leased by the contractor as
27 of January 1, 1980, in an arm's-length agreement, if the lease is
28 renewed or extended pursuant to a provision of the lease, the treatment
29 provided in subsection (1)(e) of this section shall be applied except
30 that in the case of renewals or extensions made subsequent to April 1,
31 1985, reimbursement for the annualized lease payment shall be no
32 greater than the reimbursement for the annualized lease payment for the
33 last year prior to the renewal or extension of the lease.

34 (2) Each biennium, beginning in 1985, the secretary shall review
35 the adequacy of return on investment rates in relation to anticipated
36 requirements for maintaining, reducing, or expanding nursing care
37 capacity. The secretary shall report the results of such review to the
38 legislature and make recommendations for adjustments in the return on
39 investment rates utilized in this section, if appropriate.

1 **Sec. 90.** RCW 74.46.560 and 1983 1st ex.s. c 67 s 30 are each
2 amended to read as follows:

3 The department will notify each contractor in writing of its
4 prospective ((reimbursement)) payment rates by the effective dates of
5 the rates. Unless otherwise specified at the time it is issued,
6 ((the)) a rate will be effective from the first day of the month in
7 which it is issued until a new rate becomes effective. If a rate is
8 changed as the result of an appeals or exception procedure established
9 in accordance with RCW 74.46.780, it will be effective as of the date
10 the appealed rate became effective.

11 **Sec. 91.** RCW 74.46.570 and 1983 1st ex.s. c 67 s 31 are each
12 amended to read as follows:

13 (1) Prospective rates are subject to adjustment by the department
14 as a result of errors or omissions by the department or by the
15 contractor. The department will notify the contractor in writing of
16 each adjustment and of the effective date of the adjustment, and of any
17 amount due to the department or to the contractor as a result of the
18 rate adjustment.

19 (2) If a contractor claims an error or omission based upon
20 incorrect cost reporting, amended cost report pages shall be prepared
21 and submitted by the contractor. Amended pages shall be accompanied by
22 a certification signed by the licensed administrator of the nursing
23 facility and a written justification explaining why the amendment is
24 necessary. The certification and justification shall meet such
25 criteria as are adopted by the department. Such amendments may be used
26 to revise a prospective rate but shall not be used to revise a
27 settlement if submitted after commencement of the field audit. All
28 changes determined to be material by the department shall be subject to
29 field audit. If changes are found to be incorrect or otherwise
30 unacceptable, any rate adjustment based thereon shall be null and void
31 and resulting payments or payment increases shall be subject to refund.

32 (3) The contractor shall pay an amount owed the department
33 resulting from an error or omission as determined by the department on
34 or after July 1, 1995, or commence repayment in accordance with a
35 schedule determined and agreed to in writing by the department, within
36 sixty days after receipt of notification of the rate adjustment((
37 ~~unless the contractor contests the department's determination in~~
38 ~~accordance with the procedures set forth in RCW 74.46.780.~~ If the

1 ~~determination is contested, the contractor shall pay or commence~~
2 ~~repayment within sixty days after completion of these proceedings)).~~
3 If a refund as determined by the department is not paid when due, the
4 amount thereof may be deducted from current payments by the department.
5 However, neither a timely filed request to pursue the department's
6 administrative appeals or exception procedure nor commencement of
7 judicial review, as may be available to the contractor in law, shall
8 delay recovery.

9 (4) The department shall pay any amount owed the contractor as a
10 result of a rate adjustment within thirty days after the contractor is
11 notified of the rate adjustment.

12 (5) No adjustments will be made to a rate more than one hundred
13 twenty days after the final audit narrative and summary for the period
14 the rate was effective is sent to the contractor or, if no audit is
15 held, more than one hundred twenty days after the preliminary
16 settlement becomes the final settlement, except when a settlement is
17 reopened as provided in RCW 74.46.170(3).

18 **Sec. 92.** RCW 74.46.640 and 1983 1st ex.s. c 67 s 34 are each
19 amended to read as follows:

20 (1) Payments to a contractor may be withheld by the department in
21 each of the following circumstances:

22 (a) A required report is not properly completed and filed by the
23 contractor within the appropriate time period, including any approved
24 extension. Payments will be released as soon as a properly completed
25 report is received;

26 (b) State auditors, department auditors, or authorized personnel in
27 the course of their duties are refused access to a nursing ((home))
28 facility or are not provided with existing appropriate records.
29 Payments will be released as soon as such access or records are
30 provided;

31 (c) A refund in connection with a preliminary or final settlement
32 or rate adjustment is not paid by the contractor when due. The amount
33 withheld will be limited to the unpaid amount of the refund and any
34 accumulated interest owed to the department as authorized by this
35 chapter; ((and))

36 (d) Payment for the final ((thirty)) sixty days of service under a
37 contract will be held in the absence of adequate alternate security

1 acceptable to the department pending final settlement when the contract
2 is terminated; and

3 (e) Payment for services at any time during the contract period in
4 the absence of adequate alternate security acceptable to the
5 department, if a contractor's net medicaid overpayment liability for
6 one or more nursing facilities or other debt to the department, as
7 determined by preliminary settlement, final settlement, civil fines
8 imposed by the department, third-party liabilities or other source,
9 reaches or exceeds fifty thousand dollars, whether subject to good
10 faith dispute or not, and for each subsequent increase in liability
11 reaching or exceeding twenty-five thousand dollars. Payments will be
12 released as soon as practicable after acceptable security is provided
13 or refund to the department is made.

14 (2) No payment will be withheld until written notification of the
15 suspension is provided to the contractor, stating the reason
16 (~~therefor~~) for the withholding, except that neither a request to
17 pursue the administrative appeals or exception procedure established by
18 the department in rule nor commencement of judicial review, as may be
19 available to the contractor in law, shall delay suspension of payment.

20 **Sec. 93.** RCW 74.46.690 and 1985 c 361 s 3 are each amended to read
21 as follows:

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

24 (2) Upon notification of a contract termination, the department
25 shall determine by preliminary or final settlement calculations the
26 amount of any overpayments made to the contractor, including
27 overpayments disputed by the contractor. If preliminary or final
28 settlements are unavailable for any period up to the date of contract
29 termination, the department shall make a reasonable estimate of any
30 overpayment or underpayments for such periods. The reasonable estimate
31 shall be based upon prior period settlements, available audit findings,
32 the projected impact of prospective rates, and other information
33 available to the department. The department shall also determine and
34 add in the total of all other debts owed to the department regardless
35 of source, including, but not limited to, interest owed to the
36 department as authorized by this chapter, civil fines imposed by the
37 department, or third-party liabilities.

1 (3) The old contractor shall provide security, in a form deemed
2 adequate by the department, (~~in~~) equal to the total amount of
3 determined and estimated overpayments and all other debts from any
4 source, whether or not the overpayments are the subject of good faith
5 dispute. Security shall consist of:

6 (a) Withheld payments due the contractor; or

7 (b) A surety bond issued by a bonding company acceptable to the
8 department; or

9 (c) An assignment of funds to the department; or

10 (d) Collateral acceptable to the department; or

11 (e) A purchaser's assumption of liability for the prior
12 contractor's overpayment; (~~or~~)

13 (f) A promissory note secured by a deed of trust; or

14 (g) Any combination of (a), (b), (c), (d), (~~or~~) (e), or (f) of
15 this subsection.

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

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

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

22 (c) Be for a term, as determined by the department, sufficient to
23 ensure effectiveness after final settlement and the exhaustion of any
24 administrative appeals or exception procedure and judicial remedies, as
25 may be available to and sought by the contractor, regarding payment,
26 settlement, civil fine, interest assessment, or other debt issues:
27 PROVIDED, That the bond or assignment shall initially be for a term of
28 at least five years, and shall be forfeited if not renewed thereafter
29 in an amount equal to any remaining combined overpayment (~~in dispute~~)
30 and debt liability as determined by the department;

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

36 (e) Provide that an amount equal to any recovery the department
37 determines is due from the contractor (~~at~~) from settlement or from
38 any other source of debt to the department, but not exceeding the
39 amount of the bond and assignment, shall be paid to the department if

1 the contractor does not pay the refund and debt within sixty days
2 following receipt of written demand ~~((or the conclusion of~~
3 ~~administrative or judicial proceedings to contest settlement issues))~~
4 for payment from the department to the contractor.

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

8 (6) If the total of withheld payments, bonds, and assignments is
9 less than the total of determined and estimated overpayments, the
10 unsecured amount of such overpayments shall be a debt due the state and
11 shall become a lien against the real and personal property of the
12 contractor 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 completion of any administrative appeals or exception procedure review
21 of the audit requested by the contractor, but not including completion
22 of any judicial review available to and commenced by the contractor.

23 (8) Following determination of settlement for all periods, security
24 held pursuant to this section shall be released to the contractor after
25 all overpayments, erroneous payments, and debts determined in
26 connection with final settlement, or otherwise, including accumulated
27 interest owed the department, have been paid by the contractor. ~~((If~~
28 ~~the contractor contests the settlement determination in accordance with~~
29 ~~RCW 74.46.170, the department shall hold the security, not to exceed~~
30 ~~the amount of estimated unrecovered overpayments being contested,~~
31 ~~pending completion of the administrative appeal process.))~~

32 (9) If, after calculation of settlements for any periods, it is
33 determined that overpayments exist in excess of the value of security
34 held by the state, the department may seek recovery of these additional
35 overpayments as provided by law.

36 (10) ~~((If a contract is terminated solely in order for the same~~
37 ~~owner to contract with the department to deliver services to another~~
38 ~~classification of medical care recipients at the same facility, the~~
39 ~~contractor is not required to submit final cost reports, and security~~

1 ~~shall not be required))~~ Regardless of whether a contractor intends to
2 terminate its medicaid contracts, if a contractor's net medicaid
3 overpayments and erroneous payments for one or more settlement periods,
4 and for one or more nursing facilities, combined with debts due the
5 department, reaches or exceeds a total of fifty thousand dollars, as
6 determined by preliminary settlement, final settlement, civil fines
7 imposed by the department, third-party liabilities or by any other
8 source, whether such amounts are subject to good faith dispute or not,
9 the department shall demand and obtain security equivalent to the total
10 of such overpayments, erroneous payments, and debts and shall obtain
11 security for each subsequent increase in liability reaching or
12 exceeding twenty-five thousand dollars. Such security shall meet the
13 criteria in subsections (3) and (4) of this section, except that the
14 department shall not accept an assumption of liability. The department
15 shall withhold all or portions of a contractor's current contract
16 payments or impose liens, or both, if security acceptable to the
17 department is not forthcoming. The department shall release a
18 contractor's withheld payments or lift liens, or both, if the
19 contractor subsequently provides security acceptable to the department.
20 This subsection shall apply to all overpayments and erroneous payments
21 determined by preliminary or final settlements issued on or after July
22 1, 1995, regardless of what payment periods the settlements may cover
23 and shall apply to all debts owed the department from any source,
24 including interest debts, which become due on or after July 1, 1995.

25 **Sec. 94.** RCW 74.46.770 and 1983 1st ex.s. c 67 s 39 are each
26 amended to read as follows:

27 (1) For all nursing facility medicaid payment rates effective on or
28 after July 1, 1995, and for all settlements and audits issued on or
29 after July 1, 1995, regardless of what periods the settlements or
30 audits may cover, if a contractor wishes to contest the way in which a
31 rule ((or contract provision)) relating to the ((prospective cost-
32 related reimbursement)) medicaid payment rate system was applied to the
33 contractor by the department, it shall ((first)) pursue the
34 ((administrative review process set forth in)) appeals or exception
35 procedure established by the department in rule authorized by RCW
36 74.46.780.

37 (2) ((The administrative review and fair hearing process in RCW
38 74.46.780 need not be exhausted if a contractor wishes to challenge the

1 ~~legal validity of a statute, rule, or contract provision.))~~ If a
2 contractor wishes to challenge the legal validity of a statute, rule,
3 or contract provision or wishes to bring a challenge based in whole or
4 in part on federal law, including but not limited to issues of
5 procedural or substantive compliance with the federal medicaid minimum
6 payment standard for long-term care facility services, the appeals or
7 exception procedure established by the department in rule may not be
8 used for these purposes. This prohibition shall apply regardless of
9 whether the contractor wishes to obtain a decision or ruling on an
10 issue of validity or federal compliance or wishes only to make a record
11 for the purpose of subsequent judicial review.

12 (3) If a contractor wishes to challenge the legal validity of a
13 statute, rule, or contract provision relating to the medicaid payment
14 rate system, or wishes to bring a challenge based in whole or in part
15 on federal law, it must bring such action de novo in a court of proper
16 jurisdiction as may be provided by law.

17 **Sec. 95.** RCW 74.46.780 and 1989 c 175 s 159 are each amended to
18 read as follows:

19 ~~((1) Within twenty-eight days after a contractor is notified of an~~
20 ~~action or determination it wishes to challenge, the contractor shall~~
21 ~~request in writing that the secretary review such determination. The~~
22 ~~request shall be signed by the contractor or the licensed administrator~~
23 ~~of the facility, shall identify the challenged determination and the~~
24 ~~date thereof, and shall state as specifically as practicable the~~
25 ~~grounds for its contention that the determination was erroneous.~~
26 ~~Copies of any documentation on which the contractor intends to rely to~~
27 ~~support its position shall be included with the request.~~

28 ~~(2) After receiving a request meeting the above criteria, the~~
29 ~~secretary or his designee will contact the contractor to schedule a~~
30 ~~conference for the earliest mutually convenient time. The conference~~
31 ~~shall be scheduled for no later than ninety days after a properly~~
32 ~~completed request is received unless both parties agree in writing to~~
33 ~~a specified later date.~~

34 ~~(3) The contractor and appropriate representatives of the~~
35 ~~department shall attend the conference. In addition, representatives~~
36 ~~selected by the contractor may attend and participate. The contractor~~
37 ~~shall provide to the department in advance of the conference any~~
38 ~~documentation on which it intends to rely to support its contentions.~~

1 The parties shall clarify and attempt to resolve the issues at the
2 conference. If additional documentation is needed to resolve the
3 issues, a second session of the conference shall be scheduled for not
4 later than twenty eight days after the initial session unless both
5 parties agree in writing to a specific later date.

6 (4) A written decision by the secretary will be furnished to the
7 contractor within sixty days after the conclusion of the conference.

8 (5) If the contractor desires review of an adverse decision of the
9 secretary, it shall within twenty eight days following receipt of such
10 decision file a written application for an adjudicative proceeding.
11 The proceeding is governed by chapter 34.05 RCW, the Administrative
12 Procedure Act.)) For all nursing facility medicaid payment rates
13 effective on or after July 1, 1995, and for all audits completed and
14 settlements issued on or after July 1, 1995, regardless of what periods
15 the payment rates, audits, or settlements may cover, the department
16 shall establish in rule, consistent with federal requirements for
17 nursing facilities participating in the medicaid program, an appeals or
18 exception procedure that allows individual nursing care providers an
19 opportunity to submit additional evidence and receive prompt
20 administrative review of payment rates with respect to such issues as
21 the department deems appropriate.

22 **Sec. 96.** RCW 74.46.010 and 1980 c 177 s 1 are each amended to read
23 as follows:

24 This chapter may be known and cited as the "Nursing ((Homes))
25 Facility Auditing and ((Cost Reimbursement)) Medicaid Payment Rate Act
26 ((of 1980))."

27 **Sec. 97.** RCW 34.05.010 and 1992 c 44 s 10 are each amended to read
28 as follows:

29 The definitions set forth in this section shall apply throughout
30 this chapter, unless the context clearly requires otherwise.

31 (1) "Adjudicative proceeding" means a proceeding before an agency
32 in which an opportunity for hearing before that agency is required by
33 statute or constitutional right before or after the entry of an order
34 by the agency. Adjudicative proceedings also include all cases of
35 licensing and rate making in which an application for a license or rate
36 change is denied except as limited by RCW 66.08.150, or a license is
37 revoked, suspended, or modified, or in which the granting of an

1 application is contested by a person having standing to contest under
2 the law. However, adjudicative proceedings do not include cases
3 involving issues of rates, audits, settlements, or payments to nursing
4 facility contractors or providers of long-term care under the joint
5 state and federal medicaid program.

6 (2) "Agency" means any state board, commission, department,
7 institution of higher education, or officer, authorized by law to make
8 rules or to conduct adjudicative proceedings, except those in the
9 legislative or judicial branches, the governor, or the attorney general
10 except to the extent otherwise required by law and any local
11 governmental entity that may request the appointment of an
12 administrative law judge under chapter 42.41 RCW.

13 (3) "Agency action" means licensing, the implementation or
14 enforcement of a statute, the adoption or application of an agency rule
15 or order, the imposition of sanctions, or the granting or withholding
16 of benefits.

17 Agency action does not include an agency decision regarding (a)
18 contracting or procurement of goods, services, public works, and the
19 purchase, lease, or acquisition by any other means, including eminent
20 domain, of real estate, as well as all activities necessarily related
21 to those functions, or (b) determinations as to the sufficiency of a
22 showing of interest filed in support of a representation petition, or
23 mediation or conciliation of labor disputes or arbitration of labor
24 disputes under a collective bargaining law or similar statute, or (c)
25 any sale, lease, contract, or other proprietary decision in the
26 management of public lands or real property interests, or (d) the
27 granting of a license, franchise, or permission for the use of
28 trademarks, symbols, and similar property owned or controlled by the
29 agency.

30 (4) "Agency head" means the individual or body of individuals in
31 whom the ultimate legal authority of the agency is vested by any
32 provision of law. If the agency head is a body of individuals, a
33 majority of those individuals constitutes the agency head.

34 (5) "Entry" of an order means the signing of the order by all
35 persons who are to sign the order, as an official act indicating that
36 the order is to be effective.

37 (6) "Filing" of a document that is required to be filed with an
38 agency means delivery of the document to a place designated by the

1 agency by rule for receipt of official documents, or in the absence of
2 such designation, at the office of the agency head.

3 (7) "Institutions of higher education" are the University of
4 Washington, Washington State University, Central Washington University,
5 Eastern Washington University, Western Washington University, The
6 Evergreen State College, the various community colleges, and the
7 governing boards of each of the above, and the various colleges,
8 divisions, departments, or offices authorized by the governing board of
9 the institution involved to act for the institution, all of which are
10 sometimes referred to in this chapter as "institutions."

11 (8) "Interpretive statement" means a written expression of the
12 opinion of an agency, entitled an interpretive statement by the agency
13 head or its designee, as to the meaning of a statute or other provision
14 of law, of a court decision, or of an agency order.

15 (9)(a) "License" means a franchise, permit, certification,
16 approval, registration, charter, or similar form of authorization
17 required by law, but does not include (i) a license required solely for
18 revenue purposes, or (ii) a certification of an exclusive bargaining
19 representative, or similar status, under a collective bargaining law or
20 similar statute, or (iii) a license, franchise, or permission for use
21 of trademarks, symbols, and similar property owned or controlled by the
22 agency.

23 (b) "Licensing" includes the agency process respecting the
24 issuance, denial, revocation, suspension, or modification of a license.

25 (10)(a) "Order," without further qualification, means a written
26 statement of particular applicability that finally determines the legal
27 rights, duties, privileges, immunities, or other legal interests of a
28 specific person or persons.

29 (b) "Order of adoption" means the official written statement by
30 which an agency adopts, amends, or repeals a rule.

31 (11) "Party to agency proceedings," or "party" in a context so
32 indicating, means:

33 (a) A person to whom the agency action is specifically directed; or

34 (b) A person named as a party to the agency proceeding or allowed
35 to intervene or participate as a party in the agency proceeding.

36 (12) "Party to judicial review or civil enforcement proceedings,"
37 or "party" in a context so indicating, means:

38 (a) A person who files a petition for a judicial review or civil
39 enforcement proceeding; or

1 (b) A person named as a party in a judicial review or civil
2 enforcement proceeding, or allowed to participate as a party in a
3 judicial review or civil enforcement proceeding.

4 (13) "Person" means any individual, partnership, corporation,
5 association, governmental subdivision or unit thereof, or public or
6 private organization or entity of any character, and includes another
7 agency.

8 (14) "Policy statement" means a written description of the current
9 approach of an agency, entitled a policy statement by the agency head
10 or its designee, to implementation of a statute or other provision of
11 law, of a court decision, or of an agency order, including where
12 appropriate the agency's current practice, procedure, or method of
13 action based upon that approach.

14 (15) "Rule" means any agency order, directive, or regulation of
15 general applicability (a) the violation of which subjects a person to
16 a penalty or administrative sanction; (b) which establishes, alters, or
17 revokes any procedure, practice, or requirement relating to agency
18 hearings; (c) which establishes, alters, or revokes any qualification
19 or requirement relating to the enjoyment of benefits or privileges
20 conferred by law; (d) which establishes, alters, or revokes any
21 qualifications or standards for the issuance, suspension, or revocation
22 of licenses to pursue any commercial activity, trade, or profession; or
23 (e) which establishes, alters, or revokes any mandatory standards for
24 any product or material which must be met before distribution or sale.
25 The term includes the amendment or repeal of a prior rule, but does not
26 include (i) statements concerning only the internal management of an
27 agency and not affecting private rights or procedures available to the
28 public, (ii) declaratory rulings issued pursuant to RCW 34.05.240,
29 (iii) traffic restrictions for motor vehicles, bicyclists, and
30 pedestrians established by the secretary of transportation or his
31 designee where notice of such restrictions is given by official traffic
32 control devices, or (iv) rules of institutions of higher education
33 involving standards of admission, academic advancement, academic
34 credit, graduation and the granting of degrees, employment
35 relationships, or fiscal processes.

36 (16) "Rules review committee" or "committee" means the joint
37 administrative rules review committee created pursuant to RCW 34.05.610
38 for the purpose of selectively reviewing existing and proposed rules of
39 state agencies.

1 (17) "Rule making" means the process for formulation and adoption
2 of a rule.

3 (18) "Service," except as otherwise provided in this chapter, means
4 posting in the United States mail, properly addressed, postage prepaid,
5 or personal service. Service by mail is complete upon deposit in the
6 United States mail. Agencies may, by rule, authorize service by
7 electronic telefacsimile transmission, where copies are mailed
8 simultaneously, or by commercial parcel delivery company.

9 **Sec. 98.** RCW 34.05.030 and 1994 c 39 s 1 are each amended to read
10 as follows:

11 (1) This chapter shall not apply to:

12 (a) The state militia, or

13 (b) The board of clemency and pardons, or

14 (c) The department of corrections or the indeterminate sentencing
15 review board with respect to persons who are in their custody or are
16 subject to the jurisdiction of those agencies.

17 (2) The provisions of RCW 34.05.410 through 34.05.598 shall not
18 apply:

19 (a) To adjudicative proceedings of the board of industrial
20 insurance appeals except as provided in RCW 7.68.110 and 51.48.131;

21 (b) Except for actions pursuant to chapter 46.29 RCW, to the
22 denial, suspension, or revocation of a driver's license by the
23 department of licensing;

24 (c) To the department of labor and industries where another statute
25 expressly provides for review of adjudicative proceedings of a
26 department action, order, decision, or award before the board of
27 industrial insurance appeals;

28 (d) To actions of the Washington personnel resources board, the
29 director of personnel, or the personnel appeals board; or

30 (e) To the extent they are inconsistent with any provisions of
31 chapter 43.43 RCW.

32 (3) Unless a party makes an election for a formal hearing pursuant
33 to RCW 82.03.140 or 82.03.190, RCW 34.05.410 through 34.05.598 do not
34 apply to a review hearing conducted by the board of tax appeals.

35 (4) The provisions of RCW 34.05.410 through 34.05.494 do not apply
36 to administrative review of issues relating to rates, audits,
37 settlements, or payments to nursing facility contractors or providers
38 of long-term care under the joint state and federal medicaid program.

1 (5) The rule-making provisions of this chapter do not apply to
2 reimbursement unit values, fee schedules, arithmetic conversion
3 factors, and similar arithmetic factors used to determine payment rates
4 that apply to goods and services purchased under contract for clients
5 eligible under chapter 74.09 RCW.

6 (~~(5)~~) (6) All other agencies, whether or not formerly
7 specifically excluded from the provisions of all or any part of the
8 Administrative Procedure Act, shall be subject to the entire act.

9 NEW SECTION. **Sec. 99.** On or before December 31, 1995, the
10 department of social and health services shall complete an analysis and
11 evaluation of the findings and recommendations contained in the 1994
12 legislative budget committee final report on "Nursing Home and Long-
13 Term Care - Part 1: Nursing Home Reimbursement." The department shall
14 report its recommendations for change, if any, to the house of
15 representatives health care and appropriations committees and the
16 senate health and human services and ways and means committees by such
17 date.

18 NEW SECTION. **Sec. 100.** If any part of this act is found to be in
19 conflict with federal requirements that are a prescribed condition to
20 the allocation of federal funds to the state, the conflicting part of
21 this act is inoperative solely to the extent of the conflict and with
22 respect to the agencies directly affected, and this finding does not
23 affect the operation of the remainder of this act in its application to
24 the agencies concerned. The rules under this act shall meet federal
25 requirements that are a necessary condition to the receipt of federal
26 funds by the state.

27 NEW SECTION. **Sec. 101.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected.

31 NEW SECTION. **Sec. 102.** This act is necessary for the immediate
32 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and shall take
2 effect July 1, 1995.

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