
SENATE BILL 5622

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

By Senators Rinehart, Wojahn, Fairley, Fraser and Kohl; by request of Department of Social and Health Services

Read first time 01/30/95. Referred to Committee on Health & Long-Term Care.

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, 18.79.020, 18.79.260, 18.51.091,
7 18.51.140, 18.51.300, 74.42.020, 74.09.120, 11.40.010, 11.42.020,
8 11.62.010, 11.28.120, 18.39.250, 18.39.255, 68.46.050, 70.129.040,
9 43.20B.080, 74.46.020, 74.46.105, 74.46.115, 74.46.160, 74.46.170,
10 74.46.180, 74.46.370, 74.46.420, 74.46.430, 74.46.450, 74.46.460,
11 74.46.470, 74.46.481, 74.46.490, 74.46.500, 74.46.505, 74.46.510,
12 74.46.530, 74.46.560, 74.46.570, 74.46.640, 74.46.690, 74.46.770,
13 74.46.780, 74.46.010, 34.05.010, and 34.05.030; adding new sections to
14 chapter 74.39A RCW; adding new sections to chapter 70.128 RCW; adding
15 new sections to chapter 18.79 RCW; adding a new section to chapter
16 70.127 RCW; adding new sections to chapter 74.42 RCW; adding a new
17 section to chapter 74.09 RCW; adding a new section to chapter 74.46
18 RCW; creating new sections; recodifying RCW 74.08.530, 74.08.560,
19 74.08.570, 74.08.545, and 74.08.550; repealing RCW 70.128.180 and
20 74.08.541; prescribing penalties; providing an effective date; and
21 declaring an emergency.

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

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

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

6 It is the legislature's intent that:

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

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

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

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

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

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

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

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

1 (5)) (9) State health planning for nursing home bed supply take
2 into account increased availability of other home and community-based
3 service options;

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

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

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

15 Unless the context clearly requires otherwise, the definitions in
16 this section apply throughout this chapter.

17 (1) "Adult care home" means a facility licensed under chapter
18 70.128 RCW.

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

21 (3) "Aging and adult services administration" means the aging and
22 adult services administration of the department.

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

25 (5) "Department" means the department of social and health
26 services.

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

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

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

1 (9) "Nursing home" means a facility licensed under chapter 18.51
2 RCW.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the department may disclose the identity of the complainant if such
2 disclosure is requested in writing by the complainant.

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

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

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

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

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

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

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

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

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

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

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

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

1 NEW SECTION. **Sec. 8.** 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 of social
4 and health services may contract for adult residential care.

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

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

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

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

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

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

15 (b) Include personal care services and may include appropriately
16 delegated nursing tasks other services that promote independence and
17 self-sufficiency and aging in place;

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

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

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

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

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

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

1 (1) In any case in which the department finds that an assisted
2 living or adult residential care provider, or any partner, officer,
3 director, owner of five percent or more of the assets of the provider
4 entity, or managing employee failed or refused to comply with this
5 chapter or chapter 70.129 RCW, or the standards, rules, and regulations
6 established under them, the department may take any or all of the
7 following actions:

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

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

13 (c) Order stop placement;

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

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

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

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

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

32 The legislature finds that:

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

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

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

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

9 The purposes of this chapter are to:

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

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

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

20 (4) Provide for appropriate care of residents in adult care homes;
21 and

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

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

27 Unless the context clearly requires otherwise, the definitions in
28 this section apply throughout this chapter.

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

1 (2) "Provider" means any person who is licensed under this chapter
2 to operate an adult ((family)) care home. The provider shall reside at
3 the adult ((family)) care home(~~(, except that)~~). Exceptions may be
4 authorized by the department (~~(for good cause,)~~) through standards as
5 defined in rule.

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

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

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

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

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

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

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

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

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

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

33 The legislature finds that the operation of an adult care home
34 without a license in violation of this chapter is a matter vitally
35 affecting the public interest for the purpose of applying the consumer
36 protection act, chapter 19.86 RCW. Operation of an adult care home
37 without a license in violation of this chapter is not reasonable in

1 relation to the development and preservation of business. Such a
2 violation is an unfair or deceptive act in trade or commerce and an
3 unfair method of competition for the purpose of applying the consumer
4 protection act, chapter 19.86 RCW.

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

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

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

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

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

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

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

36 (~~((5))~~) ~~A provider shall not be licensed for more than one adult~~
37 ~~family home. Exceptions may be authorized by the department for good~~
38 ~~cause, as defined in rule. The department shall submit to appropriate~~

1 committees of the legislature, by December 1, 1991, a report on the
2 number and type of good cause exceptions granted.

3 ~~(6))~~ (7) The department shall establish, by rule, standards used
4 to license nonresident providers and multiple facility operators.

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

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

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

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

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

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

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

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

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

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

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

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

37 (3) Literacy; ~~((and))~~

- 1 (4) Management and administrative ability to carry out the
2 requirements of this chapter;
- 3 (5) Satisfactory completion of department-approved initial training
4 and continuing education training as specified by the department in
5 rule;
- 6 (6) Satisfactory completion of department-approved, or equivalent,
7 special care training before a provider may provide special care
8 services to a resident; and
- 9 (7) Not been convicted of any crime listed in RCW 43.43.830 and
10 43.43.842.

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

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

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

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

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

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

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

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

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

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

14 (1) Its license to operate; and

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

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

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

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

35 (3) ~~((The inspection report shall describe any corrective measures~~
36 ~~on the part of the provider necessary to pass a reinspection. If the~~

1 ~~department finds upon reinspection of the home that the corrective~~
2 ~~measures have been satisfactorily implemented, the department shall~~
3 ~~cease any actions taken against the home. Nothing in this section~~
4 ~~shall require the department to license or renew the license of a home~~
5 ~~where serious physical harm or death has occurred to a resident))~~ The
6 provider shall develop corrective measures for any violations found by
7 the department's inspection. The department may provide consultation
8 and technical assistance to assist the provider in developing effective
9 corrective measures. The department shall include a statement of the
10 provider's corrective measures in the department's inspection report.

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

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

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

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

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

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

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

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

3 The legislature recognizes that adult care homes located within the
4 boundaries of a federally recognized Indian reservation may be licensed
5 by the Indian tribe. The department may pay for care for persons
6 residing in such homes, if there has been a tribal or state criminal
7 background check of the provider and any staff, and the client is
8 otherwise eligible for services administered by the department.

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

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

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

20 ~~((+2))~~ (3) Adult ((family)) care homes shall be maintained in a
21 clean and sanitary manner, including proper sewage disposal, food
22 handling, and hygiene practices.

23 ~~((+3))~~ (4) Adult ((family)) care homes shall develop a fire drill
24 plan for emergency evacuation of residents, shall have smoke detectors
25 in each bedroom where a resident is located, shall have fire
26 extinguishers on each floor of the home, and shall not keep
27 nonambulatory patients above the first floor of the home.

28 ~~((+4))~~ (5) Adult ((family)) care homes shall have clean,
29 functioning, and safe household items and furnishings.

30 ~~((+5))~~ (6) Adult ((family)) care homes shall provide a nutritious
31 and balanced diet and shall recognize residents' needs for special
32 diets.

33 ~~((+6))~~ (7) Adult care home providers shall ensure that all
34 residents receive care consistent with the resident's plan of care.

35 (8) Adult ((family)) care homes shall establish health care
36 procedures for the care of residents including medication
37 administration and emergency medical care.

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

3 (b) Adult ((family)) care home providers may administer medications
4 and deliver special care only to the extent ~~((that the provider is a
5 licensed health care professional for whom the administration of
6 medications is within the scope of practice under Washington))~~
7 authorized by law.

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

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

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

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

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

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

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

31 An adult care home may not willfully interfere with a
32 representative of the long-term care ombudsman program in the
33 performance of official duties. The department shall impose a penalty
34 of not more than three thousand dollars for any such willful
35 interference.

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

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

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

8 (b) Operated an adult ((family)) care home without a license or
9 under a revoked license;

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

14 (d) Willfully prevented or interfered with any inspection or
15 investigation by the department.

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

18 (a) Refuse to issue a license;

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

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

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

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

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

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

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

3 (1) Unless the context clearly requires otherwise, these
4 definitions shall apply throughout this section and RCW 35.63.140,
5 35A.63.149, 36.70.755, 35.22.680, 36.32.560, and 70.128.180:

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

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

15 (c) "Department" means the department of social and health
16 services.

17 (2) An adult (~~family~~) care home shall be considered a residential
18 use of property for zoning purposes. Adult (~~family~~) care homes shall
19 be a permitted use in all areas zoned for residential or commercial
20 purposes, including areas zoned for single family dwellings.

21 NEW SECTION. **Sec. 33.** A new section is added to chapter 70.128
22 RCW to read as follows:

23 (1) The department shall maintain a toll-free telephone number for
24 receiving complaints regarding adult care homes, as provided in section
25 6 of this act.

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

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

36 NEW SECTION. **Sec. 34.** RCW 70.128.180 and 1989 c 427 s 41 are each
37 repealed.

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

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

6 (1) A facility which:

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

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

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

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

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

27 A long-term care ombudsman shall:

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

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

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

37 (4) Provide for training volunteers and promoting the development
38 of citizen organizations to participate in the ombudsman program. A

1 volunteer long-term care ombudsman shall be able to identify and
2 resolve problems regarding the care of residents in long-term care
3 facilities and to assist such residents in the assertion of their civil
4 and human rights. However, volunteers shall not be used for complaint
5 investigations but may engage in fact-finding activities to determine
6 whether a formal complaint should be submitted to the department.

7 NEW SECTION. **Sec. 37.** RCW 74.08.530, 74.08.560, 74.08.570,
8 74.08.545, and 74.08.550 are each recodified in chapter 74.39A RCW.

9 NEW SECTION. **Sec. 38.** RCW 74.08.541 and 1989 c 427 s 4, 1986 c
10 222 s 1, 1983 1st ex.s. c 41 s 39, & 1981 1st ex.s. c 6 s 17 are each
11 repealed.

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

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

- 27 (1) The kind of services needed;
- 28 (2) The degree of service need, and the extent to which an
29 individual is dependent upon such services to remain in his or her home
30 or return to his or her home;
- 31 (3) The availability of personal or community resources which may
32 be utilized to meet the individual's need; and
- 33 (4) Such other factors as the department considers necessary to
34 insure service is provided only to those persons whose chore service
35 needs cannot be met by relatives, friends, nonprofit organizations,
36 ((or)) other persons, or by other programs or resources.

1 In determining the level of services to be provided under this
2 chapter, (~~{the}~~) the client shall be assessed using an instrument
3 designed by the department to determine the level of functional
4 disability, the need for service and the person's risk of long-term
5 care facility placement.

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

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

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

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

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

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

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

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

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

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

35 (2) The department may provide assistance in the recruiting of
36 providers of the services enumerated in (~~{RCW 74.08.541}~~) section 40 of

1 this act and seek to assure the timely provision of services in
2 emergency situations.

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

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

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

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

22 (3) As used in this section:

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

25 (b) "Work expenses" includes:

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

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

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

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

36 (d) "Disabled" means:

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

4 (ii) Eighteen years of age or older;

5 (iii) A resident of the state of Washington; and

6 (iv) Willing to submit to such examinations as are deemed necessary
7 by the department to establish the extent and nature of the disability.

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

10 The department shall contract with area agencies on aging:

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

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

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

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

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

21 (1) The term "medical assistance" may include the following care
22 and services: (a) Inpatient hospital services; (b) outpatient hospital
23 services; (c) other laboratory and x-ray services; (d) nursing facility
24 services; (e) physicians' services, which shall include prescribed
25 medication and instruction on birth control devices; (f) medical care,
26 or any other type of remedial care as may be established by the
27 secretary; (g) home health care services; (h) private duty nursing
28 services; (i) dental services; (j) physical and occupational therapy
29 and related services; (k) prescribed drugs, dentures, and prosthetic
30 devices; and eyeglasses prescribed by a physician skilled in diseases
31 of the eye or by an optometrist, whichever the individual may select;
32 (l) personal care services, as provided in this section; (m) hospice
33 services; (n) other diagnostic, screening, preventive, and
34 rehabilitative services; and (o) like services when furnished to a
35 child by a school district in a manner consistent with the requirements
36 of this chapter. For the purposes of this section, the department may

1 not cut off any prescription medications, oxygen supplies, respiratory
2 services, or other life-sustaining medical services or supplies.

3 "Medical assistance," notwithstanding any other provision of law,
4 shall not include routine foot care, or dental services delivered by
5 any health care provider, that are not mandated by Title XIX of the
6 social security act unless there is a specific appropriation for these
7 services.

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

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

16 (a) These administrative rules shall include financial eligibility
17 indexed according to the requirements of the social security act
18 providing for medicaid eligibility.

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

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

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

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

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

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

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

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

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

14 NEW SECTION. Sec. 45. A new section is added to chapter 18.79 RCW
15 to read as follows:

16 The legislature recognizes that nurses have been successfully
17 delegating nursing care tasks to family members and auxiliary staff for
18 many years. The opportunity for a nurse to delegate to other unlicensed
19 persons is essential to enhancing the viability and quality of care in
20 community health and long-term care services and to allow citizens to
21 live as independently as possible.

22 (1) A nurse may not delegate the following tasks:

23 (a) The nursing process, including assessment or diagnosis;

24 (b) Sterile procedures as defined by the nursing care quality
25 assurance commission;

26 (c) Procedures requiring crossing the barrier of the skin except
27 for blood glucose monitoring and insulin administration;

28 (d) The management, manipulation, or care for intravenous devices,
29 intravenous lines, or infusion of intravenous substances.

30 (2) A nurse may delegate specific care tasks to unlicensed persons
31 providing care to a consumer in their home or place of abode or through
32 agencies or facilities licensed under RCW 70.128.010, 18.20.020, or
33 74.15.020, Title 71A RCW, chapter 70.127 or 74.39A RCW.

34 (3) A nurse may delegate the following care tasks:

35 (a) Oral and topical medications and ointments;

36 (b) Nose, ear, eye drops, and ointments;

37 (c) Dressing changes and catheterization using clean techniques as
38 defined by the nursing care quality assurance commission;

- 1 (d) Suppositories, enemas, colostomy care;
- 2 (e) Blood glucose monitoring and insulin administration;
- 3 (f) Gastronomy feedings in established and healed condition.

4 (4) On or before September 1, 1995, the nursing care quality
5 assurance commission will, in consultation with health care
6 professionals, the department of social and health services, and
7 consumers, develop and make available to the public nurse delegation
8 protocols that will facilitate and guide safe delegation of nursing
9 tasks.

10 (5) Nursing task delegation protocols are not intended to regulate
11 the settings in which delegation may occur but are intended to ensure
12 that nursing care services have a consistent standard of practice upon
13 which the public and profession may rely and to safeguard the authority
14 of the nurse to make independent professional decisions regarding the
15 delegation of a task. Protocols will include at least the following:

16 (a) Ensure that determination of the appropriateness of delegation
17 of a nursing task is at the discretion of the nurse and is considered
18 a serious responsibility of the nurse;

19 (b) Allow delegation of a nursing care task only for consumers who
20 have a stable and predictable condition;

21 (c) Require the nurse to inform the consumer of their determination
22 that a task can be safely delegated to an unlicensed person and to
23 refrain from delegation of that task if the consumer does not consent
24 to receiving the care task from the unlicensed person;

25 (d) Require assessment by the nurse of the ability and willingness
26 of the unlicensed person to perform the delegated nursing task in the
27 absence of direct nurse supervision and to refrain from delegation if
28 the unlicensed person is not able or willing to perform the task;

29 (e) Require the nurse to analyze the complexity of the nursing task
30 that is considered for delegation;

31 (f) Require the teaching of the nursing care task to the unlicensed
32 person including observation of the unlicensed person while performing
33 the task;

34 (g) Require a plan of nursing supervision and reevaluation of the
35 delegated nursing task;

36 (h) Require instruction to the unlicensed person that the delegated
37 nursing task is specific to a consumer and is not transferable;

38 (i) Require documentation and written instruction related to the
39 delegated nursing task be provided to the unlicensed person;

1 (j) Ensure that the unlicensed person is prepared to effectively
2 deal with the predictable outcomes of performing the nursing task.

3 (6) On or before August 1, 1995, the department of health and the
4 department of social and health services, in consultation with the
5 nursing care quality assurance commission, shall each develop and
6 clarify program and reimbursement policies relating to the ability and
7 authority of a nurse to delegate care tasks in the programs and
8 services operating under their authority.

9 (7) The legislative budget committee shall submit by December 1997,
10 to the health care committees of the legislature a report that will
11 review the consumer health outcomes of delegated tasks, impact on
12 consumer access to care, impact on consumer independence, the
13 appropriateness of tasks allowed for or prohibited from delegation,
14 regulatory barriers to delegation, and level and type of training and
15 regulation of nurses and unlicensed persons.

16 (8) The nursing care quality assurance commission shall develop
17 model forms that will assist in standardizing the practice of
18 delegation, including a form that indicates consent by the consumer,
19 unlicensed person, and nurse for care to be provided by delegation.

20 NEW SECTION. **Sec. 46.** A new section is added to chapter 18.79 RCW
21 to read as follows:

22 (1) A nurse who delegates the provision of a nursing care task to
23 an unlicensed person according to delegation protocols developed by the
24 nursing care quality assurance commission shall:

25 (a) Not be subject to an action for civil damages for the
26 performance of an unlicensed person to whom a nursing care task is
27 delegated unless the unlicensed person is acting pursuant to specific
28 instructions from the nurse or the nurse fails to leave adequate
29 written instructions when the nurse should have done so; and

30 (b) Not be subject to retaliation due to a determination regarding
31 the appropriateness of task delegation.

32 (2) Nurses may report incidents of coercion or retaliation by
33 employers to the nursing care quality assurance commission.

34 **Sec. 47.** RCW 18.79.020 and 1994 sp.s. c 9 s 402 are each amended
35 to read as follows:

36 Unless a different meaning is plainly required by the context, the
37 definitions set forth in this section apply throughout this chapter.

1 (1) "Commission" means the Washington state nursing care quality
2 assurance commission.

3 (2) "Department" means the department of health.

4 (3) "Secretary" means the secretary of health or the secretary's
5 designee.

6 (4) "Diagnosis," in the context of nursing practice, means the
7 identification of, and discrimination between, the person's physical
8 and psychosocial signs and symptoms that are essential to effective
9 execution and management of the nursing care regimen.

10 (5) "Diploma" means written official verification of completion of
11 an approved nursing education program.

12 (6) "Nurse" or "nursing," unless otherwise specified as a practical
13 nurse or practical nursing, means a registered nurse or registered
14 nursing.

15 (7) "Stable and predictable condition" means a situation in which
16 the client's clinical and behavioral status is known and does not
17 require frequent presence and evaluation of a registered nurse. This
18 includes hospice clients whose deteriorating condition is predictable.

19 (8) "Supervision of unlicensed persons" means that the registered
20 nurse monitors by direct observation the unlicensed person's skill and
21 ability to perform delegated nursing tasks. Frequency of supervision
22 is at the discretion of the registered nurse but shall occur at a
23 minimum of every sixty days.

24 (9) "Unlicensed persons" means an individual who is not authorized
25 to perform nursing acts as defined in chapter 18.79 RCW except pursuant
26 to delegation by a nurse. An unlicensed person must be a registered
27 nurse assistant as defined in chapter 18.88A RCW, and have knowledge of
28 infectious disease control procedures, in order to perform a delegated
29 task unless the unlicensed person is providing care to a family member
30 or is acting without compensation, or is licensed in Washington as a
31 health practitioner subject to the uniform disciplinary act.

32 **Sec. 48.** RCW 18.79.260 and 1994 sp.s. c 9 s 426 are each amended
33 to read as follows:

34 A registered nurse under his or her license may perform for
35 compensation nursing care, as that term is usually understood, of the
36 ill, injured, or infirm, and in the course thereof, she or he may do
37 the following things that shall not be done by a person not so

1 licensed, except as provided in RCW 18.79.270 and section 45 of this
2 act:

3 (1) At or under the general direction of a licensed physician and
4 surgeon, dentist, osteopathic physician and surgeon, podiatric
5 physician and surgeon, physician assistant, osteopathic physician
6 assistant, or advanced registered nurse practitioner acting within the
7 scope of his or her license, administer medications, treatments, tests,
8 and inoculations, whether or not the severing or penetrating of tissues
9 is involved and whether or not a degree of independent judgment and
10 skill is required;

11 (2) Delegate to other persons (~~engaged in nursing,~~) the functions
12 outlined in subsection (1) of this section in accordance with this
13 chapter;

14 (3) Instruct nurses in technical subjects pertaining to nursing;

15 (4) Hold herself or himself out to the public or designate herself
16 or himself as a registered nurse.

17 NEW SECTION. Sec. 49. A new section is added to chapter 70.127
18 RCW to read as follows:

19 Notwithstanding the provisions of RCW 70.127.010(4), licensed home
20 care agencies may deliver health care services that are delegated by a
21 registered nurse pursuant to chapter 18.79 RCW who is not employed
22 directly or by contract with the agency, if the department has approved
23 the delivery of such services. The department shall approve the
24 services and issue the agency a nurse delegation endorsement where:

25 (1) The licensed home care agency has requested the endorsement in
26 writing from the department;

27 (2) The department has reviewed and approved the agency's relevant
28 policies and procedures, including criteria for accepting and declining
29 delegation and adequate safeguards to assure consumer safety that are
30 consistent with chapter 18.79 RCW and related rules; and

31 (3) The licensed care agency has paid a fee to cover the cost of
32 the department's review of the agency pursuant to this section except
33 when this review is done simultaneously with other licensing reviews
34 that are funded by the agency license fee.

35 **Sec. 50.** RCW 18.51.091 and 1987 c 476 s 24 are each amended to
36 read as follows:

1 The department shall make or cause to be made at least one
2 inspection of each nursing home (~~((prior to license renewal and shall~~
3 ~~inspect community-based services as part of the licensing renewal~~
4 ~~survey))~~ at least every eighteen months. The inspection shall be made
5 without providing advance notice of it. Every inspection may include
6 an inspection of every part of the premises and an examination of all
7 records, methods of administration, the general and special dietary and
8 the stores and methods of supply. Those nursing homes that provide
9 community-based care shall establish and maintain separate and distinct
10 accounting and other essential records for the purpose of appropriately
11 allocating costs of the providing of such care: PROVIDED, That such
12 costs shall not be considered allowable costs for reimbursement
13 purposes under chapter 74.46 RCW. Following such inspection or
14 inspections, written notice of any violation of this law or the rules
15 and regulations promulgated hereunder, shall be given the applicant or
16 licensee and the department. The notice shall describe the reasons for
17 the facility's noncompliance. The department may prescribe by
18 regulations that any licensee or applicant desiring to make specified
19 types of alterations or additions to its facilities or to construct new
20 facilities shall, before commencing such alteration, addition or new
21 construction, submit its plans and specifications therefor to the
22 department for preliminary inspection and approval or recommendations
23 with respect to compliance with the regulations and standards herein
24 authorized.

25 **Sec. 51.** RCW 18.51.140 and 1986 c 266 s 83 are each amended to
26 read as follows:

27 Standards for fire protection and the enforcement thereof, with
28 respect to all nursing homes to be licensed hereunder, shall be the
29 responsibility of the director of community, trade, and economic
30 development, through the director of fire protection, who shall adopt
31 such recognized standards as may be applicable to nursing homes for the
32 protection of life against the cause and spread of fire and fire
33 hazards. The department upon receipt of an application for a license,
34 shall submit to the director of community, trade, and economic
35 development, through the director of fire protection, in writing, a
36 request for an inspection, giving the applicant's name and the location
37 of the premises to be licensed. Upon receipt of such a request, the
38 director of community, trade, and economic development, through the

1 director of fire protection, or his or her deputy, shall make an
2 inspection of the nursing home to be licensed, and if it is found that
3 the premises do not comply with the required safety standards and fire
4 regulations as promulgated by the director of community, trade, and
5 economic development, through the director of fire protection, he or
6 she shall promptly make a written report to the nursing home and the
7 department as to the manner and time allowed in which the premises must
8 qualify for a license and set forth the conditions to be remedied with
9 respect to fire regulations. The department, applicant or licensee
10 shall notify the director of community, trade, and economic
11 development, through the director of fire protection, upon completion
12 of any requirements made by him or her, and the director of community,
13 trade, and economic development, through the director of fire
14 protection, or his or her deputy, shall make a reinspection of such
15 premises. Whenever the nursing home to be licensed meets with the
16 approval of the director of community, trade, and economic development,
17 through the director of fire protection, he or she shall submit to the
18 department, a written report approving same with respect to fire
19 protection before a full license can be issued. The director of
20 community, trade, and economic development, through the director of
21 fire protection, shall make or cause to be made inspections of such
22 nursing homes at least ((annually)) every eighteen months.

23 In cities which have in force a comprehensive building code, the
24 provisions of which are determined by the director of community, trade,
25 and economic development, through the director of fire protection, to
26 be equal to the minimum standards of the code for nursing homes adopted
27 by the director of community, trade, and economic development, through
28 the director of fire protection, the chief of the fire department,
29 provided the latter is a paid chief of a paid fire department, shall
30 make the inspection with the director of community, trade, and economic
31 development, through the director of fire protection, or his or her
32 deputy and they shall jointly approve the premises before a full
33 license can be issued.

34 **Sec. 52.** RCW 18.51.300 and 1981 1st ex.s. c 2 s 24 are each
35 amended to read as follows:

36 Unless specified otherwise by the department, a nursing home shall
37 retain and preserve all records which relate directly to the care and
38 treatment of a patient for a period of no less than ((ten)) eight years

1 following the most recent discharge of the patient; except the records
2 of minors, which shall be retained and preserved for a period of no
3 less than three years following attainment of the age of eighteen
4 years, or ten years following such discharge, whichever is longer.

5 If a nursing home ceases operations, it shall make immediate
6 arrangements, as approved by the department, for preservation of its
7 records.

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

12 **Sec. 53.** RCW 74.42.020 and 1982 c 120 s 1 are each amended to read
13 as follows:

14 The standards in ((RCW 74.42.030 through 74.42.570)) this chapter
15 are the minimum standards for facilities licensed under chapter 18.51
16 RCW((:—PROVIDED, HOWEVER, That RCW 74.42.040, 74.42.140 through
17 74.42.280, 74.42.300, 74.42.360, 74.42.370, 74.42.380, 74.42.420 (2),
18 (4), (5), (6) and (7), 74.42.430(3), 74.42.450 (2) and (3), 74.42.520,
19 74.42.530, 74.42.540, 74.42.570, and 74.42.580 shall not apply to
20 Christian Science sanatoria facilities operated and listed or certified
21 by The First Church of Christ, Scientist, in Boston, Massachusetts)).

22 Nothing in this chapter or the rules and regulations adopted under
23 this chapter shall be construed as authorizing the supervision,
24 regulation, or control of the remedial care or treatment of residents
25 or patients in any nursing home or institution conducted for those who
26 rely upon treatment by prayer or spiritual means in accordance with the
27 creed or tenets of any well-recognized church or religious
28 denomination, or for any nursing home or institution operated for the
29 exclusive care of members of a convent as defined in RCW 84.36.800 or
30 rectory, monastery, or other institution operated for the care of
31 members of the clergy.

32 NEW SECTION. **Sec. 54.** A new section is added to chapter 74.39A
33 RCW to read as follows:

34 The legislature finds that:

35 (1) A substantial proportion of individuals who are admitted to
36 nursing facilities do so without first being given adequate information

1 about other services that could meet their needs and that they may
2 prefer;

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

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

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

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

16 The department shall work in partnership with hospitals in
17 assisting patients and their families to find long-term care services
18 of their choice. The department shall not delay hospital discharges
19 but shall assist and support the activities of hospital discharge
20 planners. The department also shall coordinate with home health and
21 hospice agencies whenever appropriate. The role of the department is
22 to assist the hospital and to assist patients and their families in
23 making informed choices by providing information regarding home and
24 community options to individuals who are hospitalized and likely to
25 need long-term care.

26 (1) The department shall assess individuals who:

27 (a) Are medicaid clients, medicaid applicants, or eligible for both
28 medicare and medicaid; and

29 (b) Apply or are likely to apply for admission to a nursing
30 facility.

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

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

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

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

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

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

11 (4) When the department finds, based on assessment, that the
12 individual prefers and needs nursing facility care, the department
13 shall:

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

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

18 (c) Describe the role of the department in providing nursing
19 facility case management.

20 NEW SECTION. Sec. 56. A new section is added to chapter 74.42 RCW
21 to read as follows:

22 A nursing facility shall not admit any individual who is medicaid
23 eligible unless that individual has been assessed by the department.
24 A medicaid-eligible individual residing in a nursing facility who is
25 transferred to an acute care hospital shall not require a department
26 assessment under this section prior to returning to the same or another
27 nursing facility.

28 If a nursing facility admits an individual who is medicaid eligible
29 without assessment by the department, the effective date of the initial
30 authorization will be the date of the request for a department
31 assessment. A facility that admits such an individual without
32 assessment by the department shall not be reimbursed by the department
33 and shall not collect payment from a medicaid eligible individual for
34 any care rendered before the date the facility makes a request to the
35 department for an assessment.

36 NEW SECTION. Sec. 57. A new section is added to chapter 74.42 RCW
37 to read as follows:

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

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

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

9 NEW SECTION. **Sec. 58.** A new section is added to chapter 74.42 RCW
10 to read as follows:

11 The department shall provide case management services to assist
12 nursing facility residents, in conjunction and partnership with nursing
13 facility staff. The purpose of the case management services is to
14 assist residents and their families to assess the appropriateness and
15 availability of home and community services that could meet the
16 resident's needs so that the resident and family can make informed
17 choices.

18 The department shall provide case management services to nursing
19 facility residents who are:

20 (1) Medicaid funded;

21 (2) Dually medicaid and medicare eligible;

22 (3) Medicaid applicants; and

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

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

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

30 (2) The legislature finds that it is necessary to impose a
31 moratorium on new medicaid nursing facility contracts and on expansion
32 of existing medicaid nursing facility contracts while the department
33 evaluates and, if appropriate, seeks any necessary federal approval to
34 purchase nursing facility care either through selective contracting or
35 through a capitated managed care program.

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

3 (1) The department shall evaluate and determine whether selective
4 contracting or capitated managed care would be effective in controlling
5 the cost of medicaid nursing facility care while maintaining adequate
6 access and quality. If the department determines that either selective
7 contracting or capitated managed care would be cost-effective, the
8 department shall submit its request for any necessary approvals for
9 whichever one is more cost-effective to the appropriate federal agency
10 by December 1, 1997.

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

15 (a) The fiscal impact of implementation;

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

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

20 NEW SECTION. **Sec. 61.** A new section is added to chapter 74.09 RCW
21 to read as follows:

22 The department shall impose, on the effective date of this act, a
23 moratorium on new contracts and on expansion of existing contracts for
24 medicaid nursing facility care, effective until December 31, 1998, or
25 until selective contracting or capitated managed care is implemented,
26 whichever is sooner. During the moratorium, the department shall enter
27 into new contracts or expand the number of beds served under an
28 existing contract only in the event the department determines there is
29 a severe shortage of contracted beds in an area resulting in inadequate
30 access of nursing facility care for medicaid recipients.

31 The department may adopt rules necessary to implement the
32 moratorium.

33 **Sec. 62.** RCW 74.09.120 and 1993 sp.s. c 3 s 8 are each amended to
34 read as follows:

35 The department shall purchase necessary physician and dentist
36 services by contract or "fee for service." The department shall
37 purchase nursing ((home)) facility care by contract as provided in

1 sections 59 through 61 of this act. The department shall establish
2 regulations for reasonable nursing home accounting and reimbursement
3 systems, which shall provide that no payment shall be made to a nursing
4 home (~~which~~) that does not permit inspection by the department of
5 social and health services of every part of its premises and an
6 examination of all records, including financial records, methods of
7 administration, general and special dietary programs, the disbursement
8 of drugs and methods of supply, and any other records the department
9 deems relevant to the establishment of such a system.

10 The department may purchase nursing home care by contract in
11 veterans' homes operated by the state department of veterans affairs.
12 The department shall establish rules for reasonable accounting and
13 reimbursement systems for such care.

14 The department may purchase care in institutions for the mentally
15 retarded, also known as intermediate care facilities for the mentally
16 retarded. The department shall establish rules for reasonable
17 accounting and reimbursement systems for such care. Institutions for
18 the mentally retarded include licensed nursing homes, public
19 institutions, licensed boarding homes with fifteen beds or less, and
20 hospital facilities certified as intermediate care facilities for the
21 mentally retarded under the federal medicaid program to provide health,
22 habilitative, or rehabilitative services and twenty-four hour
23 supervision for mentally retarded individuals or persons with related
24 conditions and includes in the program "active treatment" as federally
25 defined.

26 The department may purchase care in institutions for mental
27 diseases by contract. The department shall establish rules for
28 reasonable accounting and reimbursement systems for such care.
29 Institutions for mental diseases are certified under the federal
30 medicaid program and primarily engaged in providing diagnosis,
31 treatment, or care to persons with mental diseases, including medical
32 attention, nursing care, and related services.

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

35 NEW SECTION. **Sec. 63.** A new section is added to chapter 74.39A
36 RCW to read as follows:

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

4 (a) The applicant for or recipient of long-term care services
5 transferred the asset for the purpose of qualifying for state or
6 federal coverage for long-term care services and the person who
7 received the asset was aware, or should have been aware, of this
8 purpose;

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

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

14 (2) The civil fine imposed under this section shall be imposed in
15 a judicial proceeding initiated by the department and shall equal the
16 amount the department expends for the care of the applicant or
17 recipient during the period of ineligibility attributable to the amount
18 transferred to the person subject to the civil fine.

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

24 NEW SECTION. **Sec. 64.** A new section is added to chapter 74.39A
25 RCW to read as follows:

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

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

35 NEW SECTION. **Sec. 65.** A new section is added to chapter 74.39A
36 RCW to read as follows:

37 Notwithstanding any other provision of law:

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

14 (2) The department may hire such other agencies and professionals
15 on a contingency basis or otherwise as are necessary and cost-effective
16 to collect bad debts owed to the department for long-term care
17 services.

18 **Sec. 66.** RCW 11.40.010 and 1994 c 221 s 25 are each amended to
19 read as follows:

20 Every personal representative shall, after appointment and
21 qualification, give a notice to the creditors of the deceased, stating
22 such appointment and qualification as personal representative and
23 requiring all persons having claims against the deceased to serve the
24 same on the personal representative or the estate's attorney of record,
25 and file an executed copy thereof with the clerk of the court, within
26 four months after the date of the first publication of such notice
27 described in this section or within four months after the date of the
28 filing of the copy of such notice with the clerk of the court,
29 whichever is the later, or within the time otherwise provided in RCW
30 11.40.013. The four-month time period after the later of the date of
31 the first publication of the notice to creditors or the date of the
32 filing of such notice with the clerk of the court is referred to in
33 this chapter as the "four-month time limitation." Such notice shall be
34 given as follows:

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

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

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

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

10 Except as otherwise provided in RCW 11.40.011 or 11.40.013, any
11 claim not filed within the four-month time limitation shall be forever
12 barred, if not already barred by any otherwise applicable statute of
13 limitations. This bar is effective as to claims against both the
14 decedent's probate assets and nonprobate assets as described in RCW
15 11.18.200. Proof by affidavit of the giving and publication of such
16 notice shall be filed with the court by the personal representative.

17 Acts of a notice agent in complying with chapter 221, Laws of 1994
18 may be adopted and ratified by the personal representative as if done
19 by the personal representative in complying with this chapter, except
20 that if at the time of the appointment and qualification of the
21 personal representative a notice agent had commenced nonprobate notice
22 to creditors under chapter 11.42 RCW, the personal representative shall
23 give published notice as provided in RCW 11.42.180.

24 **Sec. 67.** RCW 11.42.020 and 1994 c 221 s 32 are each amended to
25 read as follows:

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

28 (a) As of the date of the filing of a copy of the notice with the
29 clerk of the superior court for the notice county, the notice agent has
30 no knowledge of the appointment and qualification of a personal
31 representative in the decedent's estate in the state of Washington or
32 of another person becoming a notice agent; and

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

1 (2) The notice must state that all persons having claims against
2 the decedent shall: (a) Serve the same on the notice agent if the
3 notice agent is a resident of the state of Washington upon whom service
4 of all papers may be made, or on the nonprobate resident agent for the
5 notice agent, if any, or on the attorneys of record of the notice agent
6 at their respective address in the state of Washington; and (b) file an
7 executed copy of the notice with the clerk of the superior court for
8 the notice county, within: (i)(A) Four months after the date of the
9 first publication of the notice described in this section; or (B) four
10 months after the date of the filing of the copy of the notice with the
11 clerk of the superior court for the notice county, whichever is later;
12 or (ii) the time otherwise provided in RCW 11.42.050. The four-month
13 time period after the later of the date of the first publication of the
14 notice to creditors or the date of the filing of the notice with the
15 clerk of the court is referred to in this chapter as the "four-month
16 time limitation."

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

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

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

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

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

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

36 (5) A claim not filed within the four-month time limitation is
37 forever barred, if not already barred by an otherwise applicable
38 statute of limitations, except as provided in RCW 11.42.030 or
39 11.42.050. The bar is effective to bar claims against both the probate

1 estate of the decedent and nonprobate assets that were subject to
2 satisfaction of the decedent's general liabilities immediately before
3 the decedent's death. If a notice to the creditors of a decedent is
4 published by more than one notice agent and the notice agents are not
5 acting jointly, the four-month time limitation means the four-month
6 time limitation that applies to the notice agent who first publishes
7 the notice. Proof by affidavit or perjury declaration made under RCW
8 9A.72.085 of the giving and publication of the notice must be filed
9 with the clerk of the superior court for the notice county by the
10 notice agent.

11 **Sec. 68.** RCW 11.62.010 and 1993 c 291 s 1 are each amended to read
12 as follows:

13 (1) At any time after forty days from the date of a decedent's
14 death, any person who is indebted to or who has possession of any
15 personal property belonging to the decedent or to the decedent and his
16 or her surviving spouse as a community, which debt or personal property
17 is an asset which is subject to probate, shall pay such indebtedness or
18 deliver such personal property, or so much of either as is claimed, to
19 a person claiming to be a successor of the decedent upon receipt of
20 proof of death and of an affidavit made by said person which meets the
21 requirements of subsection (2) of this section.

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

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

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

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

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

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

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

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

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

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

13 (3) A transfer agent of any security shall change the registered
14 ownership of the security claimed from the decedent to the person
15 claiming to be the successor with respect to such security upon the
16 presentation of proof of death and of an affidavit made by such person
17 which meets the requirements of subsection (2) of this section. Any
18 governmental agency required to issue certificates of ownership or of
19 license registration to personal property shall issue a new certificate
20 of ownership or of license registration to a person claiming to be a
21 successor of the decedent upon receipt of proof of death and of an
22 affidavit made by such person which meets the requirements of
23 subsection (2) of this section.

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

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

30 **Sec. 69.** RCW 11.28.120 and 1994 c 221 s 23 are each amended to
31 read as follows:

32 Administration of an estate if the decedent died intestate or if
33 the personal representative or representatives named in the will
34 declined or were unable to serve shall be granted to some one or more
35 of the persons hereinafter mentioned, and they shall be respectively
36 entitled in the following order:

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

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

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

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

11 (5)(a) The director of revenue, or the director's designee, for
12 those estates having property subject to the provisions of chapter
13 11.08 RCW; however, the director may waive this right.

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

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

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

25 **Sec. 70.** RCW 18.39.250 and 1989 c 390 s 3 are each amended to read
26 as follows:

27 (1) Any funeral establishment selling funeral merchandise or
28 services by prearrangement funeral service contract and accepting
29 moneys therefore shall establish and maintain one or more
30 prearrangement funeral service trusts under Washington state law with
31 two or more designated trustees, for the benefit of the beneficiary of
32 the prearrangement funeral service contract or may join with one or
33 more other Washington state licensed funeral establishments in a
34 "master trust" provided that each member of the "master trust" shall
35 comply individually with the requirements of this chapter.

36 (2) Up to ten percent of the cash purchase price of each
37 prearrangement funeral service contract, excluding sales tax, may be
38 retained by the funeral establishment unless otherwise provided in this

1 chapter. If the prearrangement funeral service contract is canceled
2 within thirty calendar days of its signing, then the purchaser shall
3 receive a full refund of all moneys paid under the contract.

4 (3) At least ninety percent of the cash purchase price of each
5 prearrangement funeral service contract, paid in advance, excluding
6 sales tax, shall be placed in the trust established or utilized by the
7 funeral establishment. Deposits to the prearrangement funeral service
8 trust shall be made not later than the twentieth day of the month
9 following receipt of each payment made on the last ninety percent of
10 each prearrangement funeral service contract, excluding sales tax.

11 (4) All prearrangement funeral service trust moneys shall be
12 deposited in an insured account in a qualified public depository or
13 shall be invested in instruments issued or insured by any agency of the
14 federal government if these securities are held in a public depository.
15 The account shall be designated as the prearrangement funeral service
16 trust of the funeral establishment for the benefit of the beneficiaries
17 named in the prearrangement funeral service contracts. The
18 prearrangement funeral service trust shall not be considered as, nor
19 shall it be used as, an asset of the funeral establishment.

20 (5) After deduction of reasonable fees for the administration of
21 the trust, taxes paid or withheld, or other expenses of the trust, all
22 interest, dividends, increases, or accretions of whatever nature earned
23 by a trust shall be kept unimpaired and shall become a part of the
24 trust. Adequate records shall be maintained to allocate the share of
25 principal and interest to each contract. Fees deducted for the
26 administration of the trust shall not exceed one percent of the face
27 amount of the prearrangement funeral service contract per annum. In no
28 instance shall the administrative charges deducted from the
29 prearrangement funeral service trust reduce, diminish, or in any other
30 way lessen the value of the trust so that the services or merchandise
31 provided for under the contract are reduced, diminished, or in any
32 other way lessened.

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

37 (a) If the funeral establishment files a verified statement with
38 the trustees that the prearrangement funeral merchandise and services

1 covered by the contract have been furnished and delivered in accordance
2 therewith; or

3 (b) If the funeral establishment files a verified statement with
4 the trustees that the prearrangement funeral merchandise and services
5 covered by the contract have been canceled in accordance with its
6 terms.

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

11 (8) Prearrangement funeral service contracts which have or should
12 have an account in a prearrangement funeral service trust may be
13 terminated by the board if the funeral establishment goes out of
14 business, becomes insolvent or bankrupt, makes an assignment for the
15 benefit of creditors, has its prearrangement funeral service
16 certificate of registration revoked, or for any other reason is unable
17 to fulfill the obligations under the contract. In such event, or upon
18 demand by the purchaser or beneficiary of the prearrangement funeral
19 service contract, the funeral establishment shall refund to the
20 purchaser or beneficiary all moneys deposited in the trust and
21 allocated to the contract unless otherwise ordered by a court of
22 competent jurisdiction. The purchaser or beneficiary may, in lieu of
23 a refund, elect to transfer the prearrangement funeral service contract
24 and all amounts in trust to another funeral establishment licensed
25 under this chapter which will agree, by endorsement to the contract, to
26 be bound by the contract and to provide the funeral merchandise or
27 services. Election of this option shall not relieve the defaulting
28 funeral establishment of its obligation to the purchaser or beneficiary
29 for any amounts required to be, but not placed, in trust.

30 (9) Prior to the sale or transfer of ownership or control of any
31 funeral establishment which has contracted for prearrangement funeral
32 service contracts, any person, corporation, or other legal entity
33 desiring to acquire such ownership or control shall apply to the
34 director in accordance with RCW 18.39.145. Persons and business
35 entities selling or relinquishing, and persons and business entities
36 purchasing or acquiring ownership or control of such funeral
37 establishments shall each verify and attest to a report showing the
38 status of the prearrangement funeral service trust or trusts on the
39 date of the sale. This report shall be on a form prescribed by the

1 board and shall be considered part of the application for a funeral
2 establishment license. In the event of failure to comply with this
3 subsection, the funeral establishment shall be deemed to have gone out
4 of business and the provisions of subsection (8) of this section shall
5 apply.

6 (10) Prearrangement funeral service trust moneys shall not be used,
7 directly or indirectly, for the benefit of the funeral establishment or
8 any director, officer, agent, or employee of the funeral establishment
9 including, but not limited to, any encumbrance, pledge, or other use of
10 prearrangement funeral service trust moneys as collateral or other
11 security.

12 (11)(a) If, at the time of the signing of the prearrangement
13 funeral service contract, the beneficiary of the trust is a recipient
14 of public assistance as defined in RCW 74.04.005, or reasonably
15 anticipates being so defined, the contract may provide that the trust
16 will be irrevocable. If after the contract is entered into, the
17 beneficiary becomes eligible or seeks to become eligible for public
18 assistance under Title 74 RCW, the contract may provide for an election
19 by the beneficiary, or by the purchaser on behalf of the beneficiary,
20 to make the trust irrevocable thereafter in order to become or remain
21 eligible for such assistance.

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

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

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

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

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

38 (d) Specifies that, in the case of cancellation by a purchaser or
39 beneficiary eligible to cancel under the contract or under this

1 chapter, up to ten percent of the contract amount may be retained by
2 the seller to cover the necessary expenses of selling and setting up
3 the contract;

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

6 **Sec. 71.** RCW 18.39.255 and 1989 c 390 s 4 are each amended to read
7 as follows:

8 Prearranged funeral service contracts funded through insurance
9 shall contain language which:

10 (1) States the amount of insurance;

11 (2) Informs the purchaser of the name and address of the insurance
12 company through which the insurance will be provided, the policy
13 number, and the name of the beneficiary; ~~((and))~~

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

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

19 (5) States that for purposes of the contract, the procedures in RCW
20 18.39.250(11)(b) shall control such recoupment.

21 **Sec. 72.** RCW 68.46.050 and 1973 1st ex.s. c 68 s 5 are each
22 amended to read as follows:

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

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

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

35 (2) The department of social and health services shall notify the
36 cemetery authority maintaining a prearrangement trust fund regulated by
37 this chapter that the department has a claim on the estate of a

1 beneficiary for long-term care services. Such notice shall be renewed
2 at least every three years. The cemetery authority upon becoming aware
3 of the death of a beneficiary shall give notice to the department of
4 social and health services, office of financial recovery, who shall
5 file any claim there may be within thirty days of the notice.

6 **Sec. 73.** RCW 70.129.040 and 1994 c 214 s 5 are each amended to
7 read as follows:

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

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

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

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

24 ~~((4))~~ (3) The facility must establish and maintain a system that
25 assures a full and complete and separate accounting of each resident's
26 personal funds entrusted to the facility on the resident's behalf.

27 (a) The system must preclude any commingling of resident funds with
28 facility funds or with the funds of any person other than another
29 resident.

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

32 ~~((5))~~ (4) Upon the death of a resident with a personal fund
33 deposited with the facility the facility must convey within forty-five
34 days the resident's funds, and a final accounting of those funds, to
35 the individual or probate jurisdiction administering the resident's
36 estate; but in the case of a resident who received long-term care
37 services paid for by the state, the funds and accounting shall be sent
38 to the state of Washington, department of social and health services,

1 office of financial recovery. The department may establish a release
2 procedure for the costs of final disposition.

3 **Sec. 74.** RCW 43.20B.080 and 1994 c 21 s 3 are each amended to read
4 as follows:

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

8 (2) Liens may be adjusted by foreclosure in accordance with chapter
9 61.12 RCW.

10 (3) In the case of an individual who was fifty-five years (~~or~~
11 ~~{of}~~) of age or older when the individual received medical assistance,
12 the department shall seek adjustment or recovery from the individual's
13 estate, and from nonprobate assets of the individual as defined by RCW
14 11.02.005 except property passing through a community property
15 agreement, but only for medical assistance consisting of nursing
16 facility services, home and community-based services, other services
17 that the department determines to be appropriate, and related hospital
18 and prescription drug services. Recovery from the individual's estate,
19 including foreclosure of liens imposed under this section, shall be
20 undertaken as soon as practicable, consistent with the requirements of
21 42 U.S.C. Sec. 1396p.

22 (~~(+3)~~) (4)(a) The department shall establish procedures consistent
23 with standards established by the federal department of health and
24 human services and pursuant to 42 U.S.C. Sec. 1396p to waive recovery
25 when such recovery would work an undue hardship.

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

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

33 NEW SECTION. **Sec. 75.** A new section is added to chapter 74.46 RCW
34 to read as follows:

35 Upon the death of a resident with a personal fund deposited with
36 the facility, the facility must convey within forty-five days the
37 resident's funds, and a final accounting of those funds, to the

1 individual or probate jurisdiction administering the resident's estate;
2 but in the case of a resident who received long-term care services, the
3 funds and accounting shall be sent to the state of Washington,
4 department of social and health services, office of financial recovery.
5 The department may establish a release procedure for the costs of final
6 disposition.

7 **Sec. 76.** RCW 74.46.020 and 1993 sp.s. c 13 s 1 are each amended to
8 read as follows:

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

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

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

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

25 (4) "Arm's-length transaction" means a transaction resulting from
26 good-faith bargaining between a buyer and seller who are not related
27 organizations and have adverse positions in the market place. Sales or
28 exchanges of nursing home facilities among two or more parties in which
29 all parties subsequently continue to own one or more of the facilities
30 involved in the transactions shall not be considered as arm's-length
31 transactions for purposes of this chapter. Sale of a nursing home
32 facility which is subsequently leased back to the seller within five
33 years of the date of sale shall not be considered as an arm's-length
34 transaction for purposes of this chapter.

35 (5) "Assets" means economic resources of the contractor, recognized
36 and measured in conformity with generally accepted accounting
37 principles.

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

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

5 (8) "Beneficial owner" means:

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

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

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

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

18 (c) Any person who, subject to subparagraph (b) of this subsection,
19 has the right to acquire beneficial ownership of such ownership
20 interest within sixty days, including but not limited to any right to
21 acquire:

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

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

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

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

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

36 (d) Any person who in the ordinary course of business is a pledgee
37 of ownership interest under a written pledge agreement shall not be
38 deemed to be the beneficial owner of such pledged ownership interest
39 until the pledgee has taken all formal steps necessary which are

1 required to declare a default and determines that the power to vote or
2 to direct the vote or to dispose or to direct the disposition of such
3 pledged ownership interest will be exercised; except that:

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

9 (ii) The pledgee agreement, prior to default, does not grant to the
10 pledgee:

11 (A) The power to vote or to direct the vote of the pledged
12 ownership interest; or

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

17 (9) "Capitalization" means the recording of an expenditure as an
18 asset.

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

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

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

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

30 (14) "Entity" means an individual, partnership, corporation, or any
31 other association of individuals capable of entering enforceable
32 contracts.

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

37 (16) "Facility" means a nursing home licensed in accordance with
38 chapter 18.51 RCW, excepting nursing homes certified as institutions

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

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

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

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

12 (20) "Generally accepted auditing standards" means auditing
13 standards approved by the American institute of certified public
14 accountants (AICPA).

15 (21) "Goodwill" means the excess of the price paid for a business
16 over the fair market value of all other identifiable, tangible, and
17 intangible assets acquired.

18 (22) "Historical cost" means the actual cost incurred in acquiring
19 and preparing an asset for use, including feasibility studies,
20 architect's fees, and engineering studies.

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

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

26 (25) "Lease agreement" means a contract between two parties for the
27 possession and use of real or personal property or assets for a
28 specified period of time in exchange for specified periodic payments.
29 Elimination (due to any cause other than death or divorce) or addition
30 of any party to the contract, expiration, or modification of any lease
31 term in effect on January 1, 1980, or termination of the lease by
32 either party by any means shall constitute a termination of the lease
33 agreement. An extension or renewal of a lease agreement, whether or
34 not pursuant to a renewal provision in the lease agreement, shall be
35 considered a new lease agreement. A strictly formal change in the
36 lease agreement which modifies the method, frequency, or manner in
37 which the lease payments are made, but does not increase the total
38 lease payment obligation of the lessee, shall not be considered
39 modification of a lease term.

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

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

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

8 (29) "Net invested funds" means the net book value of tangible
9 fixed assets employed by a contractor to provide services under the
10 medical care program, including land, buildings, and equipment as
11 recognized and measured in conformity with generally accepted
12 accounting principles, plus an allowance for working capital which
13 shall be five percent of the product of the per patient day rate
14 multiplied by the prior calendar year reported total patient days of
15 each contractor.

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

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

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

25 (33) "Patient day" or "~~((client))~~ resident day" means a calendar
26 day of care provided to a nursing facility resident, which will include
27 the day of admission and exclude the day of discharge; except that,
28 when admission and discharge occur on the same day, one day of care
29 shall be deemed to exist. A "client day" or "recipient day" means a
30 calendar day of care provided to a medical care recipient determined
31 eligible by the department for services provided under chapter 74.09
32 RCW, subject to the same conditions regarding admission and discharge
33 applicable to a patient day or resident day of care.

34 (34) "Professionally designated real estate appraiser" means an
35 individual who is regularly engaged in the business of providing real
36 estate valuation services for a fee, and who is deemed qualified by a
37 nationally recognized real estate appraisal educational organization on
38 the basis of extensive practical appraisal experience, including the
39 writing of real estate valuation reports as well as the passing of

1 written examinations on valuation practice and theory, and who by
2 virtue of membership in such organization is required to subscribe and
3 adhere to certain standards of professional practice as such
4 organization prescribes.

5 (35) "Qualified therapist" means:

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

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

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

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

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

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

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

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

24 (i) A respiratory care practitioner certified under chapter 18.89
25 RCW.

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

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

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

1 (~~(38)~~) (39) "Related organization" means an entity which is under
2 common ownership and/or control with, or has control of, or is
3 controlled by, the contractor.

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

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

11 (~~(39)~~) (40) "Restricted fund" means those funds the principal
12 and/or income of which is limited by agreement with or direction of the
13 donor to a specific purpose.

14 (~~(40)~~) (41) "Secretary" means the secretary of the department of
15 social and health services.

16 (~~(41)~~) (42) "Title XIX" or "Medicaid" means the 1965 amendments
17 to the social security act, P.L. 89-07, as amended.

18 (~~(42)~~) (43) "Physical plant capital improvement" means a
19 capitalized improvement that is limited to an improvement to the
20 building or the related physical plant.

21 **Sec. 77.** RCW 74.46.105 and 1985 c 361 s 10 are each amended to
22 read as follows:

23 Cost reports and patient trust accounts of contractors shall be
24 field audited by the department, either by department staff or by
25 auditors under contract to the department, in accordance with the
26 provisions of this chapter. The department when it deems necessary to
27 assure the accuracy of cost reports may review any underlying financial
28 statements or other records upon which the cost reports are based. The
29 department shall have the authority to accept or reject audits which
30 fail to satisfy the requirements of this section or which are performed
31 by auditors who violate any of the rules of this section. Department
32 audits of the cost reports and patient trust accounts shall be
33 conducted as follows:

34 (1) Each year the department will provide for field audit of the
35 cost report, statistical reports, and patient trust funds, as
36 established by RCW 74.46.700, of all or a sample of reporting
37 facilities selected by profiles of costs, exceptions, contract

1 terminations, upon special requests or other factors determined by the
2 department.

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

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

15 (4) Where an audit for a recent reporting or trust fund period
16 discloses material discrepancies, undocumented costs or mishandling of
17 patient trust funds, auditors may examine prior unaudited periods, for
18 indication of similar material discrepancies, undocumented costs or
19 mishandling of patient trust funds for not more than two reporting
20 periods preceding the facility reporting period selected in the sample.

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

26 (6) Audits shall meet generally accepted auditing standards as
27 promulgated by the American institute of certified public accountants
28 and the standards for audit of governmental organizations, programs,
29 activities and functions as published by the comptroller general of the
30 United States. Audits shall be supervised or reviewed by a certified
31 public accountant.

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

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

37 (b) Acquire or commit to acquire any direct or indirect financial
38 interest in the ownership, financing or operation of a nursing home in

1 this state during said auditor's employment or contract with the
2 department;

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

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

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

12 **Sec. 78.** RCW 74.46.115 and 1983 1st ex.s. c 67 s 6 are each
13 amended to read as follows:

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

19 **Sec. 79.** RCW 74.46.160 and 1985 c 361 s 12 are each amended to
20 read as follows:

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

26 (2) After completion of the audit process, including exhaustion or
27 mutual termination of (~~reviews and~~) any administrative appeals (~~of~~)
28 or exception procedure used by the contractor to contest audit findings
29 or determinations, but not including any judicial review available to
30 and commenced by the contractor, the department will submit a final
31 settlement report by cost center to the contractor which fully
32 substantiates disallowed costs, refunds, underpayments, or adjustments
33 to the contractor's cost report. (~~Where the contractor is pursuing~~
34 ~~judicial or administrative review or appeal in good faith regarding~~
35 ~~audit findings or determinations, the department may issue a partial~~
36 ~~final settlement to recover overpayments based on audit adjustments not~~
37 ~~in dispute.))~~

1 **Sec. 80.** RCW 74.46.170 and 1983 1st ex.s. c 67 s 10 are each
2 amended to read as follows:

3 (1) A contractor shall have (~~(thirty)~~) a period of days, to be
4 established by the department in rule, after the date the preliminary
5 or final settlement report is submitted to the contractor to contest a
6 settlement determination under the administrative appeals or exception
7 procedure established by the department pursuant to RCW 74.46.780. Any
8 such administrative review of a settlement shall be limited to
9 calculation of the settlement or the application of settlement
10 principles and rules, or both, and shall not examine or reexamine
11 payment rate or audit issues. After the (~~(thirty-day)~~) period
12 established by the department in rule has expired, a preliminary or
13 final settlement will not be subject to review.

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

18 (3) A settlement will be reopened if necessary to make adjustments
19 for findings resulting from an audit performed pursuant to RCW
20 74.46.105(4).

21 **Sec. 81.** RCW 74.46.180 and 1993 sp.s. c 13 s 2 are each amended to
22 read as follows:

23 (1) The (~~(state)~~) department shall make payment of any
24 underpayments to which a contractor is entitled as determined by the
25 department under the provisions of this chapter within (~~(thirty)~~) sixty
26 days after the date the preliminary or final settlement report is
27 submitted to the contractor and the department shall pay interest at
28 the rate of one percent per month on any unpaid preliminary or final
29 settlement balance still due the contractor after such time, accruing
30 from sixty days after the preliminary or final settlement report is
31 submitted to the contractor, and no interest shall accrue or be paid
32 for any period prior to this date: PROVIDED, That any increase in a
33 preliminary or final settlement amount due the contractor resulting
34 from a final administrative or judicial decision shall also bear
35 interest until paid at the rate of one percent per month, accruing from
36 sixty days after the preliminary or final settlement was submitted to
37 the contractor. The department shall pay no interest on amounts due a

1 contractor other than amounts determined by preliminary or final
2 settlement as provided in this subsection.

3 (2) A contractor found, under a preliminary or final settlement
4 issued by the department, to have received either overpayments or
5 erroneous payments ((under a preliminary or final settlement)), to
6 which the contractor is not entitled as determined by the department
7 under the provisions of this chapter, shall refund such erroneous
8 payments or overpayments to the ((state)) department within ((thirty))
9 sixty days after the date the preliminary or final settlement report is
10 submitted to the contractor, subject to the provisions of subsections
11 (3), (4), and ((+7)) (6) of this section, PROVIDED, That for all
12 preliminary or final settlements issued on and after July 1, 1995,
13 regardless of what period a settlement covers, neither a timely filed
14 request to pursue the department's administrative appeals or exception
15 procedure nor commencement of judicial review, as may be available to
16 the contractor in law, contesting the settlement, erroneous payments or
17 overpayments shall delay recovery. A contractor shall pay interest at
18 the rate of one percent per month on any unpaid preliminary or final
19 settlement balance still due the department sixty days after the
20 preliminary or final settlement report is submitted to the contractor,
21 accruing from this date: PROVIDED Further, That the department shall
22 refund interest collected for preliminary and settlement amounts the
23 contractor was entitled to retain as subsequently determined by final
24 administrative or judicial decision.

25 (3) Within the cost centers of nursing services and food, all
26 savings resulting from the respective allowable costs being lower than
27 the respective reimbursement rate paid to the contractor during the
28 report period shall be refunded to the department. However, in
29 computing a preliminary or final settlement, savings in a cost center
30 may be shifted to cover a deficit in another cost center up to the
31 amount of any savings. Not more than twenty percent of the rate in a
32 cost center may be shifted into that cost center and no shifting may be
33 made into the property cost center. There shall be no shifting out of
34 nursing services, and savings in food shall be shifted only to cover
35 deficits in the nursing services cost center. There shall be no
36 shifting from the operational to the administrative cost center.

37 (4) Within the administrative and property cost centers, the
38 contractor shall retain at least fifty percent, but not more than
39 seventy-five percent, of any savings resulting from the respective

1 audited allowable costs being lower than the respective reimbursement
2 rates paid to the contractor during the report period multiplied by the
3 number of authorized medical care client days in which said rates were
4 in effect, except that no savings may be retained if reported costs in
5 the administrative and property cost centers exceed audited allowable
6 costs in these cost areas by a total of ten cents or more per patient
7 day. The secretary, by rule, shall establish the basis for the
8 specific percentages of savings to the contractors. Such rules may
9 provide for differences in the percentages allowed for each cost center
10 to individual facilities based on performance measures related to
11 administrative efficiency.

12 (5) All return on investment rate payments provided by RCW
13 74.46.530 shall be retained by the contractor to the extent net
14 invested funds are substantiated by department field audit. Any
15 industrial insurance dividend or premium discount under RCW 51.16.035
16 shall be retained by the contractor to the extent that such dividend or
17 premium discount is attributable to the contractor's private patients.

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

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

24 (b) In the instance the contract has been terminated, (i) deduct
25 the amount of refund due the department, plus interest assessed at the
26 rate and in the manner provided in ((RCW 43.20B.695)) subsection (2) of
27 this section, from any payments due; or (ii) recover the amount due,
28 plus any interest assessed under RCW 43.20B.695, from security posted
29 with or otherwise obtained by the department or by any other lawful
30 means.

31 ((Where the facility is pursuing timely filed judicial or
32 administrative remedies in good faith regarding settlement issues, the
33 contractor need not refund nor shall the department withhold from the
34 facility current payment amounts the department claims to be due from
35 the facility but which are specifically disputed by the contractor.))
36 For all erroneous payments and overpayments determined by preliminary
37 or final settlements issued before July 1, 1995, and not yet recovered
38 by the department because they are specifically disputed by the
39 contractor in a timely filed administrative or judicial review, if the

1 judicial or administrative remedy sought by the facility is not granted
2 after all appeals are exhausted or mutually terminated, the facility
3 shall make payment of such amounts due plus interest accrued from the
4 date of filing of the appeal, as payable on judgments, within sixty
5 days of the date such decision is made.

6 **Sec. 82.** RCW 74.46.370 and 1980 c 177 s 37 are each amended to
7 read as follows:

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

19 (2) Building improvements that extend the remaining useful life of
20 a building shall be depreciated over the remaining useful life of the
21 building, as modified by the improvement. Building improvements that
22 do not extend the remaining useful life of a building shall be
23 depreciated over the estimated useful life of the improvement or
24 improved asset as promulgated by the current edition of Estimated
25 Useful Lives of Depreciable Hospital Assets published by the American
26 Hospital Association. Should the American Hospital Association cease
27 to publish estimated useful lives of hospital assets in the future, the
28 department may in regulation select similar guidelines from an
29 alternate source.

30 (3) Improvements to leased property which are the responsibility of
31 the contractor under the terms of the lease that extend the remaining
32 useful life of a building shall be depreciated over the remaining
33 useful life of the building as modified by the improvement, as
34 authorized in subsection (2) of this section for nonleased property.
35 Improvements to leased property which are the responsibility of the
36 contractor under the terms of the lease that do not extend the
37 remaining useful life of a building shall be depreciated over the
38 estimated useful life of the improvement or improved asset utilizing

1 the same American Hospital Association guidelines authorized in
2 subsection (2) of this section for nonleased property.

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

5 **Sec. 83.** RCW 74.46.420 and 1993 sp.s. c 13 s 7 are each amended to
6 read as follows:

7 The following principles are inherent in RCW 74.46.430 through
8 74.46.590:

9 (1) ~~((Reimbursement))~~ Effective July 1, 1995, nursing facility
10 payment rates will be set prospectively on a per ((patient)) resident
11 day basis ((on)) utilizing a ((two-year)) four-year rate cycle system
12 corresponding to ((each)) the four fiscal years within two consecutive
13 state ((biennium; and)) biennia, however, the two state biennia
14 extending from July 1, 1993, to June 30, 1997, shall be utilized as the
15 chronological framework for the initial four-year rate cycle, as if the
16 cycle had commenced July 1, 1993. Because the four-year system will
17 commence July 1, 1995, at the mid-point of the initial cycle, rates
18 commencing July 1, 1995, shall represent third fiscal year rates, and
19 rates commencing July 1, 1996, shall represent fourth fiscal year
20 rates.

21 (2) ~~((The rates, in the nursing services, food, administrative, and~~
22 ~~operational cost centers, shall be adjusted downward or upward when set~~
23 ~~effective July 1 of the first fiscal year of the two year rate setting~~
24 ~~cycle and adjusted again downward or upward effective July 1 of the~~
25 ~~second fiscal year of the rate setting cycle for economic trends and~~
26 ~~conditions.))~~ For the first fiscal year of each four-year rate cycle,
27 beginning July 1, 1997, component rates in the nursing services, food,
28 administrative, and operational cost centers will be cost-rebased
29 utilizing desk-reviewed or audited, or both, costs reported for the
30 calendar year ending eighteen months before the July 1 commencement of
31 each such first fiscal year. Such first fiscal year component rates
32 shall also be adjusted downward or upward for economic trends and
33 conditions as provided in this section.

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

1 ~~The period used to measure the increase or decrease to be applied~~
2 ~~to these first year biennial rates shall be the calendar year preceding~~
3 ~~the July 1 commencement of the state biennium.))~~ For the second,
4 third, and fourth fiscal years of each four-year rate cycle, component
5 rates in the nursing services, food, administrative, and operational
6 cost centers, shall not be cost-rebased, but shall be adjusted downward
7 or upward for economic trends and conditions as provided in this
8 section.

9 ~~(4) ((The July 1))~~ Cost-rebased rates ((for the second year of each
10 biennium)) commencing July 1 of the first fiscal year of each four-year
11 rate cycle, beginning July 1, 1997, shall be adjusted downward or
12 upward in the nursing services, food, administrative, and operational
13 cost centers by ((the)) a twenty-four-month change in the nursing home
14 input price index without capital costs published by the health care
15 financing administration of the department of health and human
16 services, the HCFA index((, however, any increase shall be multiplied
17 by one and one-half)). The period to be used to measure the HCFA index
18 increase or decrease to be ((multiplied by one and one-half and))
19 applied ((or decrease to be applied)) to these ((second year biennial))
20 first fiscal year rate((s)) components shall ((also)) be the ((calendar
21 year preceding the July 1 commencement of the state biennium:
22 PROVIDED, However, That in the event the change in the HCFA index
23 measured over the following calendar year, the one terminating six
24 months after the start of the state biennium, is twenty-five percent
25 greater or less than the change in the HCFA index measured over the
26 calendar year preceding commencement of the state biennium, the
27 department shall use the HCFA index increase multiplied by one and one-
28 half or decrease in such following calendar year to inflate or decrease
29 nursing facilities' nursing services, food, administrative, and
30 operational rates for July 1 of the second biennial year)) twenty-four-
31 month period ending six months before July 1 of the first fiscal year
32 of each four-year rate cycle.

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

1 (a) For second fiscal year rates, the HCFA index period shall be
2 the twelve months ending eighteen months before the July 1 start of the
3 second fiscal year. In the event the change in the index measured over
4 the following twelve months, ending six months before the July 1 start
5 of the second fiscal year, is twenty-five percent greater or less than
6 the change in the HCFA index measured over the twelve months ending
7 eighteen months before the second fiscal year, the department shall use
8 the HCFA index increase or decrease in such following twelve-month
9 period.

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

13 (c) For fourth fiscal year rates, the HCFA index period shall be
14 the twelve months ending eighteen months before the July 1 start of the
15 fourth fiscal year. In the event the change in the HCFA index measured
16 over the following twelve months, ending six months before the July 1
17 start of the fourth fiscal year, is twenty-five percent greater or less
18 than the change in the HCFA index measured over the twelve months
19 ending eighteen months before the fourth fiscal year, the department
20 shall use the HCFA index increase or decrease in such following twelve-
21 month period.

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

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

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

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

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

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

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

34 (7) For all rates effective on and after July 1, 1995, the
35 department shall follow the four-year cycle of rebasing and shall make
36 adjustments for economic trends and conditions utilizing the principles
37 and index periods set forth in this section. If ((either the implicit
38 price deflator index or)) the health care financing administration
39 index specified in this section ceases to be published in the future,

1 the department shall select by rule and use in ~~((their))~~ its place
2 ~~((one or more))~~ another measure~~((s))~~ of change from the same or an
3 alternate source ~~((or sources for))~~ using the same or comparable time
4 periods.

5 **Sec. 84.** RCW 74.46.430 and 1993 sp.s. c 13 s 8 are each amended to
6 read as follows:

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

12 (2) ~~((As required,))~~ The department may modify such maximum per
13 ~~((patient))~~ resident day rates pursuant to the administrative ~~((review~~
14 ~~provisions of))~~ appeals or exception procedure authorized by RCW
15 74.46.780.

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

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

24 **Sec. 85.** RCW 74.46.450 and 1993 sp.s. c 13 s 9 are each amended to
25 read as follows:

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

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

36 (3) If a properly completed budget is not received at least sixty
37 days prior to the effective date of the contract, the department will

1 establish preliminary rates based on the other factors specified in
2 subsection (2) of this section. These preliminary rates will remain in
3 effect until adjusted or reset as provided in this chapter.

4 (4) The department is authorized to develop policies and procedures
5 in rule to address the computation of rates and rate adjustments
6 authorized by RCW 74.46.420 for economic trends and conditions for the
7 first, second, third, and ((second)) fourth fiscal years of each
8 ((biennium, including steps necessary to prorate rate adjustments for
9 economic trends and conditions as authorized in RCW 74.46.420, for
10 contractors having less than twelve months of cost report data for the
11 prior calendar year)) four-year rate cycle.

12 **Sec. 86.** RCW 74.46.460 and 1993 sp.s. c 13 s 10 are each amended
13 to read as follows:

14 (1) Each contractor's ((reimbursement)) component payment rates
15 ((will)) shall be determined or adjusted for economic trends and
16 conditions prospectively at least once during each calendar year, as
17 provided in this chapter, to be effective July ((1st)) 1. Provided,
18 that, except for the rates of new contractors as defined by the
19 department, a contractor's cost-rebased rate for the first fiscal year
20 of each ((biennium)) four-year rate cycle must be established upon its
21 own ((prior calendar period)) cost report of at least six months of
22 adjusted or audited, or both, cost data from the calendar year ending
23 eighteen months prior to the July 1 commencement of the first fiscal
24 year rebased rate.

25 (2) Rates may be adjusted as determined by the department to take
26 into account variations in the distribution of patient classifications
27 or changes in patient characteristics from the prior reporting year,
28 program changes required by the department, or changes in staffing
29 levels at a facility required by the department. Rates may also be
30 adjusted to cover costs associated with placing a nursing home in
31 receivership which costs are not covered by the rate of the former
32 contractor, including: Compensation of the receiver, reasonable
33 expenses of receivership and transition of control, and costs incurred
34 by the receiver in carrying out court instructions or rectifying
35 deficiencies found. Rates shall be adjusted for any capitalized
36 additions or replacements made as a condition for licensure or
37 certification. Rates shall be adjusted for capitalized improvements
38 done under RCW 74.46.465.

1 **Sec. 87.** RCW 74.46.470 and 1993 sp.s. c 13 s 11 are each amended
2 to read as follows:

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

7 (a) Nursing services;

8 (b) Food;

9 (c) Administrative;

10 (d) Operational; and

11 (e) Property.

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

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

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

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

31 (4) For purposes of this section, "nonadministrative wages and
32 benefits" means wages and payroll taxes paid with respect to, and the
33 employer share of the cost of benefits provided to, employees in job
34 classes specified in an appropriation, which may not include
35 administrators, assistant administrators, or administrators in
36 training.

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

1 **Sec. 88.** RCW 74.46.481 and 1993 sp.s. c 13 s 12 are each amended
2 to read as follows:

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

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

20 (3) Utilizing regression or other statistical technique, the
21 department shall determine a reasonable limit on facility nursing staff
22 taking into account facility patient characteristics. For purposes of
23 this section, facility nursing staff refers to registered nurses,
24 licensed practical nurses and nursing assistants employed by the
25 facility or obtained through temporary labor contract arrangements.
26 Effective January 1, 1988, the hours associated with the training of
27 nursing assistants and the supervision of that training for nursing
28 assistants shall not be included in the calculation of facility nursing
29 staff. In selecting a measure of patient characteristics, the
30 department shall take into account:

31 (a) The correlation between alternative measures and facility
32 nursing staff; and

33 (b) The cost of collecting information for and computation of a
34 measure.

35 If regression is used, the limit shall be set at predicted nursing
36 staff plus 1.75 regression standard errors. If another statistical
37 method is utilized, the limit shall be set at a level corresponding to
38 1.75 standard errors above predicted staffing computed according to a

1 regression procedure. A regression calculated shall be effective for
2 the entire biennium.

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

10 (5) Every ~~((two))~~ four years, beginning with July 1, 1997, rates,
11 when rates are set at the beginning of each new ~~((biennium))~~ four-year
12 rate cycle, the department shall divide into two peer groups nursing
13 facilities located in the state of Washington providing services to
14 medicaid residents: (a) Those facilities located within a metropolitan
15 statistical area as defined and determined by the United States office
16 of management and budget or other applicable federal office and (b)
17 those not located in such an area. The facilities in each peer group
18 shall then be arrayed from lowest to highest by magnitude of per
19 ~~((patient))~~ resident day adjusted or audited, or both, nursing services
20 cost from the ~~((prior))~~ calendar report year ending eighteen months
21 before the July 1 commencement of the first fiscal year cost-rebased
22 rates, regardless of whether any such adjustments are contested by the
23 nursing facility, and the median or fiftieth percentile cost for each
24 peer group shall be determined. Nursing services component rates for
25 facilities within each peer group for the first fiscal year of ~~((the~~
26 ~~biennium))~~ each four-year rate cycle shall be set at the lower of the
27 facility's adjusted or audited, or both, per ~~((patient))~~ resident day
28 nursing services cost from the ~~((prior))~~ report period for the calendar
29 year ending eighteen months before the July 1 commencement of the first
30 fiscal year rates or the median cost for the facility's peer group plus
31 twenty-five percent utilizing the same calendar year report data.
32 Therefore, for July 1, 1997, cost-rebased rates, the adjusted or
33 audited, or both, cost report data utilized shall be from calendar year
34 1995 and for July 1, 2001, cost-rebased rates the adjusted or audited,
35 or both, cost report data utilized shall be from calendar year 1999.
36 This rate shall be reduced or inflated as authorized by RCW 74.46.420.
37 However, the per patient day peer group median cost plus twenty-five
38 percent limit shall not apply to the nursing services cost center
39 reimbursement rate only for the pilot facility especially designed to

1 meet the needs of persons living with AIDS as defined by RCW 70.24.017
2 and specifically authorized for this purpose under the 1989 amendment
3 to the Washington state health plan.

4 ~~(6) ((If a nursing facility is impacted by the limit authorized in
5 subsection (5) of this section, it shall not receive a prospective rate
6 in nursing services for July 1, 1993, less than the same facility's
7 prospective rate in nursing services as of June 30, 1993, adjusted by
8 any increase in the implicit price deflator for personal consumption
9 expenditures, IPD index, as measured over the period authorized by RCW
10 74.46.420(3)).~~

11 ~~(7))~~ Beginning with July 1, 1995, rates, the third fiscal year
12 rate of the initial four-year rate cycle, a nursing facility's
13 nonrebased component rate in nursing services for the second, third,
14 and fourth years of each ((biennium)) four-year rate cycle shall be
15 that facility's nursing services component rate ((as of July 1 of the
16 first year of that biennium)) existing on June 30 immediately before
17 the July 1 commencement of each nonrebased fiscal year rate period,
18 reduced or inflated as authorized by RCW 74.46.420. The
19 ((alternating)) rebased and nonrebased rate-setting procedures
20 ((prescribed)) described in this section and chapter for a facility's
21 ((two)) four July 1 nursing services rates occurring within each
22 ((biennium)) four-year rate period shall be followed in the same order
23 for each succeeding ((biennium)) four-year period.

24 ~~((+8))~~ (7) Median cost((s)) limits for peer groups shall be
25 calculated ((initially)) only once as provided in this chapter on the
26 basis of the most recent adjusted cost information available to the
27 department from the calendar cost report year ending eighteen months
28 prior to ((the calculation of the new rate for)) July 1 of the first
29 fiscal year of each ((biennium)) four-year rate cycle, regardless of
30 whether the adjustments are contested or subject to pending
31 administrative or judicial review. ((Median costs for peer groups
32 shall be recalculated as provided in this chapter on the basis of the
33 most recent adjusted cost information available to the department on
34 October 31 of the first fiscal year of each biennium, and shall apply
35 retroactively to the prior July 1 rate, regardless of whether the
36 adjustments are contested or subject to pending administrative or
37 judicial review.)) Median cost((s)) limits, once calculated, shall not
38 be adjusted to reflect subsequent administrative or judicial rulings,
39 whether final or not.

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

14 ~~(10))~~ (8) The department shall establish a method for identifying
15 patients with exceptional care requirements and a method for
16 establishing or negotiating on a consistent basis rates for such
17 patients.

18 ~~((11))~~ (9) The department, in consultation with interested
19 parties, shall adopt rules to establish the criteria the department
20 will use in reviewing any requests by a contractor for a prospective
21 rate adjustment to be used to increase the number of nursing staff.
22 These rules shall also specify the time period for submission and
23 review of staffing requests: PROVIDED, That a decision on a staffing
24 request shall not take longer than sixty days from the date the
25 department receives such a complete request. In establishing the
26 criteria, the department may consider, but is not limited to, the
27 following:

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

31 (b) Staffing patterns for similar facilities in the same peer
32 group;

33 (c) Physical plant of contractor; and

34 (d) Survey, inspection of care, and department consultation
35 results.

36 **Sec. 89.** RCW 74.46.490 and 1993 sp.s. c 13 s 13 are each amended
37 to read as follows:

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

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

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

1 facility's ~~((two))~~ four July 1 food rates occurring within each
2 ~~((biennium))~~ four-year rate period shall be followed in the same order
3 for each succeeding ~~((biennium))~~ four-year 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 rate cycle, regardless of whether the
10 adjustments are contested or subject to pending administrative or
11 judicial review. ~~((Median costs for peer groups shall be recalculated~~
12 ~~as provided in this chapter on the basis of the most recent adjusted~~
13 ~~cost information available to the department on October 31 of the first~~
14 ~~fiscal year of each biennium, and shall apply retroactively to the~~
15 ~~prior July 1 rate, regardless of whether the adjustments are contested~~
16 ~~or subject to pending administrative or judicial review.))~~ Median
17 cost~~((s))~~ limits, once calculated, shall not be adjusted to reflect
18 subsequent administrative or judicial rulings, whether final or not.

19 **Sec. 90.** RCW 74.46.500 and 1993 sp.s. c 13 s 14 are each amended
20 to read as follows:

21 (1) The administrative cost center shall include for cost reporting
22 purposes all administrative, oversight, and management costs whether
23 facility on-site or allocated in accordance with a department-approved
24 joint-cost allocation methodology. Such costs shall be identical to
25 the cost report line item costs categorized under "general and
26 administrative" in the "administration and operations" combined cost
27 center existing prior to January 1, 1993, except for nursing supplies
28 and purchased medical records.

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

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

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

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

1 ~~cost information available to the department on October 31 of the first~~
2 ~~fiscal year of each biennium, and shall apply retroactively to the~~
3 ~~prior July 1 rate, regardless of whether the adjustments are contested~~
4 ~~or subject to pending administrative or judicial review.)) Median~~
5 ~~cost((s)) limits, once calculated, shall not be adjusted to reflect~~
6 ~~subsequent administrative or judicial rulings, whether final or not.~~

7 **Sec. 91.** RCW 74.46.505 and 1993 sp.s. c 13 s 15 are each amended
8 to read as follows:

9 (1) The operational cost center shall include for cost reporting
10 purposes all allowable costs of the daily operation of the facility not
11 included in nursing services and related care, food, administrative, or
12 property costs, whether such costs are facility on-site or allocated in
13 accordance with a department-approved joint-cost allocation
14 methodology.

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, operational cost
25 from the ((prior)) calendar report year ending eighteen months before
26 the July 1 commencement of the first fiscal year cost-rebased rates,
27 regardless of whether any such adjustments are contested by the nursing
28 facility, and the median or fiftieth percentile cost for each peer
29 group shall be determined. Operational component rates for facilities
30 within each peer group for the first fiscal year of ((the biennium))
31 each four-year rate cycle shall be set at the lower of the facility's
32 adjusted or audited, or both, per ((patient)) resident day operational
33 cost from the ((prior)) report period for the calendar year ending
34 eighteen months before the July 1 commencement of the first fiscal year
35 rates or the median cost for the facility's peer group plus twenty-five
36 percent utilizing the same calendar year report data. For July 1,
37 1997, cost-rebased rates then, the adjusted or audited, or both, cost
38 report data utilized shall be from calendar year 1995 and for July 1,

1 2001, cost-rebased rates the adjusted or audited, or both, cost report
2 data utilized shall be from calendar year 1999. This rate shall be
3 reduced 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 operational component rate for the second, third, and fourth years of
7 each ((biennium)) four-year rate cycle shall be that facility's
8 operational component rate ((as of July 1 of the first year of that
9 biennium)) existing on June 30 immediately before the July 1
10 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 operational
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 double biennial rate cycle, regardless of
23 whether the adjustments are contested or subject to pending
24 administrative or judicial review. ((Median costs for peer groups
25 shall be recalculated as provided in this chapter on the basis of the
26 most recent adjusted cost information available to the department on
27 October 31 of the first fiscal year of each biennium, and shall apply
28 retroactively to the prior July 1 rate, regardless of whether the
29 adjustments are contested or subject to pending administrative or
30 judicial review.)) Median cost((s)) limits, once calculated, shall not

31 be adjusted to reflect subsequent administrative or judicial rulings,
32 whether final or not.

33 **Sec. 92.** RCW 74.46.510 and 1993 sp.s. c 13 s 16 are each amended
34 to read as follows:

35 (1) The property cost center rate for each facility shall be
36 determined by dividing the sum of the reported allowable prior period
37 actual depreciation, subject to RCW 74.46.310 through 74.46.380,
38 adjusted for any capitalized additions or replacements approved by the

1 department, and the retained savings from such cost center, as provided
2 in RCW 74.46.180, by the total patient days for the facility in the
3 prior period. If a capitalized addition or retirement of an asset will
4 result in a different licensed bed capacity during the ensuing period,
5 the prior period total patient days used in computing the property cost
6 center rate shall be adjusted to anticipated patient day level.

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

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

15 **Sec. 93.** RCW 74.46.530 and 1993 sp.s. c 13 s 17 are each amended
16 to read as follows:

17 (1) The department shall establish for each medicaid nursing
18 facility a return on investment (ROI) rate composed of two parts: A
19 financing allowance and a variable return allowance. The financing
20 allowance part of a facility's return on investment component rate
21 shall be rebased annually, effective July 1, in accordance with this
22 section and chapter, regardless of whether the rate is for the first,
23 second, third, or ~~((second))~~ fourth fiscal year of the ~~((biennium))~~
24 four-year rate cycle.

25 (a) The financing allowance shall be determined by multiplying the
26 net invested funds of each facility by .10, and dividing by the
27 contractor's total patient days from the most recent cost report
28 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 financing and
31 variable return allowances shall be adjusted to the anticipated patient
32 day level.

33 (b) In computing the portion of net invested funds representing the
34 net book value of tangible fixed assets, the same assets, depreciation
35 bases, lives, and methods referred to in RCW 74.46.330, 74.46.350,
36 74.46.360, 74.46.370, and 74.46.380, including owned and leased assets,
37 shall be utilized, except that the capitalized cost of land upon which
38 the facility is located and such other contiguous land which is

1 reasonable and necessary for use in the regular course of providing
2 patient care shall also be included. Subject to provisions and
3 limitations contained in this chapter, for land purchased by owners or
4 lessors before July 18, 1984, capitalized cost of land shall be the
5 buyer's capitalized cost. For all partial or whole rate periods after
6 July 17, 1984, if the land is purchased after July 17, 1984,
7 capitalized cost shall be that of the owner of record on July 17, 1984,
8 or buyer's capitalized cost, whichever is lower. In the case of leased
9 facilities where the net invested funds are unknown or the contractor
10 is unable to provide necessary information to determine net invested
11 funds, the secretary shall have the authority to determine an amount
12 for net invested funds based on an appraisal conducted according to RCW
13 74.46.360(1).

14 (c) In determining the variable return allowance:

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

29 (ii) The department shall then compute the variable return
30 allowance by multiplying the appropriate percentage amounts, which
31 shall not be less than one percent and not greater than four percent,
32 by the sum of the facility's nursing services, food, administrative,
33 and operational rate components. The percentage amounts will be based
34 on groupings of facilities according to the rankings prescribed in (i)
35 of this subsection (1)(c). The percentages calculated and assigned
36 will remain the same for the next variable return allowance paid in the
37 second, third, and fourth fiscal years of the ~~((biennium))~~ four-year
38 rate cycle. Those groups of facilities with lower per diem costs shall

1 receive higher percentage amounts than those with higher per diem
2 costs.

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

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

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

25 (ii) The sum of the financing allowance computed under subsection
26 (1)(e)(i) of this section and the variable allowance shall be compared
27 to the annualized lease payment, plus any interest and depreciation
28 associated with contractor-owned assets, for the period covered by the
29 prospective rates, divided by the contractor's total patient days,
30 minus the property cost center rate determined according to RCW
31 74.46.510. The lesser of the two amounts shall be called the alternate
32 return on investment rate.

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

38 (f) In the case of a facility which was leased by the contractor as
39 of January 1, 1980, in an arm's-length agreement, if the lease is

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

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

13 **Sec. 94.** RCW 74.46.560 and 1983 1st ex.s. c 67 s 30 are each
14 amended to read as follows:

15 The department will notify each contractor in writing of its
16 prospective (~~reimbursement~~) payment rates by the effective dates of
17 the rates. Unless otherwise specified at the time it is issued,
18 (~~the~~) a rate will be effective from the first day of the month in
19 which it is issued until a new rate becomes effective. If a rate is
20 changed as the result of an appeals or exception procedure established
21 in accordance with RCW 74.46.780, it will be effective as of the date
22 the appealed rate became effective.

23 **Sec. 95.** RCW 74.46.570 and 1983 1st ex.s. c 67 s 31 are each
24 amended to read as follows:

25 (1) Prospective rates are subject to adjustment by the department
26 as a result of errors or omissions by the department or by the
27 contractor. The department will notify the contractor in writing of
28 each adjustment and of the effective date of the adjustment, and of any
29 amount due to the department or to the contractor as a result of the
30 rate adjustment.

31 (2) If a contractor claims an error or omission based upon
32 incorrect cost reporting, amended cost report pages shall be prepared
33 and submitted by the contractor. Amended pages shall be accompanied by
34 a certification signed by the licensed administrator of the nursing
35 facility and a written justification explaining why the amendment is
36 necessary. The certification and justification shall meet such
37 criteria as are adopted by the department. Such amendments may be used

1 to revise a prospective rate but shall not be used to revise a
2 settlement if submitted after commencement of the field audit. All
3 changes determined to be material by the department shall be subject to
4 field audit. If changes are found to be incorrect or otherwise
5 unacceptable, any rate adjustment based thereon shall be null and void
6 and resulting payments or payment increases shall be subject to refund.

7 (3) The contractor shall pay an amount owed the department
8 resulting from an error or omission as determined by the department on
9 or after July 1, 1995, or commence repayment in accordance with a
10 schedule determined and agreed to in writing by the department, within
11 sixty days after receipt of notification of the rate adjustment(~~(7~~
12 ~~unless the contractor contests the department's determination in~~
13 ~~accordance with the procedures set forth in RCW 74.46.780. If the~~
14 ~~determination is contested, the contractor shall pay or commence~~
15 ~~repayment within sixty days after completion of these proceedings)).~~
16 If a refund as determined by the department is not paid when due, the
17 amount thereof may be deducted from current payments by the department.
18 However, neither a timely filed request to pursue the department's
19 administrative appeals or exception procedure nor commencement of
20 judicial review, as may be available to the contractor in law, shall
21 delay recovery.

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

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

31 **Sec. 96.** RCW 74.46.640 and 1983 1st ex.s. c 67 s 34 are each
32 amended to read as follows:

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

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

1 (b) State auditors, department auditors, or authorized personnel in
2 the course of their duties are refused access to a nursing (~~(home)~~)
3 facility or are not provided with existing appropriate records.
4 Payments will be released as soon as such access or records are
5 provided;

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

11 (d) Payment for the final (~~(thirty)~~) sixty days of service under a
12 contract will be held in the absence of adequate alternate security
13 acceptable to the department pending final settlement when the contract
14 is terminated; and

15 (e) Payment for services at any time during the contract period in
16 the absence of adequate alternate security acceptable to the
17 department, if a contractor's net medicaid overpayment liability for
18 one or more nursing facilities or other debt to the department, as
19 determined by preliminary settlement, final settlement, civil fines
20 imposed by the department, third-party liabilities or other source,
21 reaches or exceeds fifty thousand dollars, whether subject to good
22 faith dispute or not, and for each subsequent increase in liability
23 reaching or exceeding twenty-five thousand dollars. Payments will be
24 released as soon as practicable after acceptable security is provided
25 or refund to the department is made.

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

32 **Sec. 97.** RCW 74.46.690 and 1985 c 361 s 3 are each amended to read
33 as follows:

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

36 (2) Upon notification of a contract termination, the department
37 shall determine by preliminary or final settlement calculations the
38 amount of any overpayments made to the contractor, including

1 overpayments disputed by the contractor. If preliminary or final
2 settlements are unavailable for any period up to the date of contract
3 termination, the department shall make a reasonable estimate of any
4 overpayment or underpayments for such periods. The reasonable estimate
5 shall be based upon prior period settlements, available audit findings,
6 the projected impact of prospective rates, and other information
7 available to the department. The department shall also determine and
8 add in the total of all other debts owed to the department regardless
9 of source, including, but not limited to, interest owed to the
10 department as authorized by this chapter, civil fines imposed by the
11 department, or third-party liabilities.

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

17 (a) Withheld payments due the contractor; or

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

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

21 (d) Collateral acceptable to the department; or

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

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

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

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

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

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

33 (c) Be for a term, as determined by the department, sufficient to
34 ensure effectiveness after final settlement and the exhaustion of any
35 administrative appeals or exception procedure and judicial remedies, as
36 may be available to and sought by the contractor, regarding payment,
37 settlement, civil fine, interest assessment, or other debt issues:

38 PROVIDED, That the bond or assignment shall initially be for a term of
39 at least five years, and shall be forfeited if not renewed thereafter

1 in an amount equal to any remaining combined overpayment (~~(in dispute)~~)
2 and debt liability as determined by the department;

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

8 (e) Provide that an amount equal to any recovery the department
9 determines is due from the contractor (~~(at)~~) from settlement or from
10 any other source of debt to the department, but not exceeding the
11 amount of the bond and assignment, shall be paid to the department if
12 the contractor does not pay the refund and debt within sixty days
13 following receipt of written demand (~~(or the conclusion of~~
14 ~~administrative or judicial proceedings to contest settlement issues)~~)
15 for payment from the department to the contractor.

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

19 (6) If the total of withheld payments, bonds, and assignments is
20 less than the total of determined and estimated overpayments, the
21 unsecured amount of such overpayments shall be a debt due the state and
22 shall become a lien against the real and personal property of the
23 contractor from the time of filing by the department with the county
24 auditor of the county where the contractor resides or owns property,
25 and the lien claim has preference over the claims of all unsecured
26 creditors.

27 (7) The contractor shall file a properly completed final cost
28 report in accordance with the requirements of this chapter, which shall
29 be audited by the department. A final settlement shall be determined
30 within ninety days following completion of the audit process, including
31 completion of any administrative appeals or exception procedure review
32 of the audit requested by the contractor, but not including completion
33 of any judicial review available to and commenced by the contractor.

34 (8) Following determination of settlement for all periods, security
35 held pursuant to this section shall be released to the contractor after
36 all overpayments, erroneous payments, and debts determined in
37 connection with final settlement, or otherwise, including accumulated
38 interest owed the department, have been paid by the contractor. (~~(If~~
39 ~~the contractor contests the settlement determination in accordance with~~

1 ~~RCW 74.46.170, the department shall hold the security, not to exceed~~
2 ~~the amount of estimated unrecovered overpayments being contested,~~
3 ~~pending completion of the administrative appeal process.))~~

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

8 ~~((If a contract is terminated solely in order for the same~~
9 ~~owner to contract with the department to deliver services to another~~
10 ~~classification of medical care recipients at the same facility, the~~
11 ~~contractor is not required to submit final cost reports, and security~~
12 ~~shall not be required))~~ Regardless of whether a contractor intends to
13 terminate its medicaid contracts, if a contractor's net medicaid
14 overpayments and erroneous payments for one or more settlement periods,
15 and for one or more nursing facilities, combined with debts due the
16 department, reaches or exceeds a total of fifty thousand dollars, as
17 determined by preliminary settlement, final settlement, civil fines
18 imposed by the department, third-party liabilities or by any other
19 source, whether such amounts are subject to good faith dispute or not,
20 the department shall demand and obtain security equivalent to the total
21 of such overpayments, erroneous payments, and debts and shall obtain
22 security for each subsequent increase in liability reaching or
23 exceeding twenty-five thousand dollars. Such security shall meet the
24 criteria in subsections (3) and (4) of this section, except that the
25 department shall not accept an assumption of liability. The department
26 shall withhold all or portions of a contractor's current contract
27 payments or impose liens, or both, if security acceptable to the
28 department is not forthcoming. The department shall release a
29 contractor's withheld payments or lift liens, or both, if the
30 contractor subsequently provides security acceptable to the department.
31 This subsection shall apply to all overpayments and erroneous payments
32 determined by preliminary or final settlements issued on or after July
33 1, 1995, regardless of what payment periods the settlements may cover
34 and shall apply to all debts owed the department from any source,
35 including interest debts, which become due on or after July 1, 1995.

36 **Sec. 98.** RCW 74.46.770 and 1983 1st ex.s. c 67 s 39 are each
37 amended to read as follows:

1 (1) For all nursing facility medicaid payment rates effective on or
2 after July 1, 1995, and for all settlements and audits issued on or
3 after July 1, 1995, regardless of what periods the settlements or
4 audits may cover, if a contractor wishes to contest the way in which a
5 rule ((or contract provision)) relating to the ((prospective cost-
6 related reimbursement)) medicaid payment rate system was applied to the
7 contractor by the department, it shall ((first)) pursue the
8 ((administrative review process set forth in)) appeals or exception
9 procedure established by the department in rule authorized by RCW
10 74.46.780.

11 ((The administrative review and fair hearing process in RCW
12 74.46.780 need not be exhausted if a contractor wishes to challenge the
13 legal validity of a statute, rule, or contract provision.)) If a
14 contractor wishes to challenge the legal validity of a statute, rule,
15 or contract provision or wishes to bring a challenge based in whole or
16 in part on federal law, including but not limited to issues of
17 procedural or substantive compliance with the federal medicaid minimum
18 payment standard for long-term care facility services, the appeals or
19 exception procedure established by the department in rule may not be
20 used for these purposes. This prohibition shall apply regardless of
21 whether the contractor wishes to obtain a decision or ruling on an
22 issue of validity or federal compliance or wishes only to make a record
23 for the purpose of subsequent judicial review.

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

29 **Sec. 99.** RCW 74.46.780 and 1989 c 175 s 159 are each amended to
30 read as follows:

31 ((1) Within twenty-eight days after a contractor is notified of an
32 action or determination it wishes to challenge, the contractor shall
33 request in writing that the secretary review such determination. The
34 request shall be signed by the contractor or the licensed administrator
35 of the facility, shall identify the challenged determination and the
36 date thereof, and shall state as specifically as practicable the
37 grounds for its contention that the determination was erroneous.

1 Copies of any documentation on which the contractor intends to rely to
2 support its position shall be included with the request.

3 (2) After receiving a request meeting the above criteria, the
4 secretary or his designee will contact the contractor to schedule a
5 conference for the earliest mutually convenient time. The conference
6 shall be scheduled for no later than ninety days after a properly
7 completed request is received unless both parties agree in writing to
8 a specified later date.

9 (3) The contractor and appropriate representatives of the
10 department shall attend the conference. In addition, representatives
11 selected by the contractor may attend and participate. The contractor
12 shall provide to the department in advance of the conference any
13 documentation on which it intends to rely to support its contentions.
14 The parties shall clarify and attempt to resolve the issues at the
15 conference. If additional documentation is needed to resolve the
16 issues, a second session of the conference shall be scheduled for not
17 later than twenty eight days after the initial session unless both
18 parties agree in writing to a specific later date.

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

21 (5) If the contractor desires review of an adverse decision of the
22 secretary, it shall within twenty eight days following receipt of such
23 decision file a written application for an adjudicative proceeding.
24 The proceeding is governed by chapter 34.05 RCW, the Administrative
25 Procedure Act.)) For all nursing facility medicaid payment rates
26 effective on or after July 1, 1995, and for all audits completed and
27 settlements issued on or after July 1, 1995, regardless of what periods
28 the payment rates, audits, or settlements may cover, the department
29 shall establish in rule, consistent with federal requirements for
30 nursing facilities participating in the medicaid program, an appeals or
31 exception procedure that allows individual nursing care providers an
32 opportunity to submit additional evidence and receive prompt
33 administrative review of payment rates with respect to such issues as
34 the department deems appropriate.

35 **Sec. 100.** RCW 74.46.010 and 1980 c 177 s 1 are each amended to
36 read as follows:

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

4 **Sec. 101.** RCW 34.05.010 and 1992 c 44 s 10 are each amended to
5 read as follows:

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

8 (1) "Adjudicative proceeding" means a proceeding before an agency
9 in which an opportunity for hearing before that agency is required by
10 statute or constitutional right before or after the entry of an order
11 by the agency. Adjudicative proceedings also include all cases of
12 licensing and rate making in which an application for a license or rate
13 change is denied except as limited by RCW 66.08.150, or a license is
14 revoked, suspended, or modified, or in which the granting of an
15 application is contested by a person having standing to contest under
16 the law. However, adjudicative proceedings do not include cases
17 involving issues of rates, audits, settlements, or payments to nursing
18 facility contractors or providers of long-term care under the joint
19 state and federal medicaid program.

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

27 (3) "Agency action" means licensing, the implementation or
28 enforcement of a statute, the adoption or application of an agency rule
29 or order, the imposition of sanctions, or the granting or withholding
30 of benefits.

31 Agency action does not include an agency decision regarding (a)
32 contracting or procurement of goods, services, public works, and the
33 purchase, lease, or acquisition by any other means, including eminent
34 domain, of real estate, as well as all activities necessarily related
35 to those functions, or (b) determinations as to the sufficiency of a
36 showing of interest filed in support of a representation petition, or
37 mediation or conciliation of labor disputes or arbitration of labor
38 disputes under a collective bargaining law or similar statute, or (c)

1 any sale, lease, contract, or other proprietary decision in the
2 management of public lands or real property interests, or (d) the
3 granting of a license, franchise, or permission for the use of
4 trademarks, symbols, and similar property owned or controlled by the
5 agency.

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

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

13 (6) "Filing" of a document that is required to be filed with an
14 agency means delivery of the document to a place designated by the
15 agency by rule for receipt of official documents, or in the absence of
16 such designation, at the office of the agency head.

17 (7) "Institutions of higher education" are the University of
18 Washington, Washington State University, Central Washington University,
19 Eastern Washington University, Western Washington University, The
20 Evergreen State College, the various community colleges, and the
21 governing boards of each of the above, and the various colleges,
22 divisions, departments, or offices authorized by the governing board of
23 the institution involved to act for the institution, all of which are
24 sometimes referred to in this chapter as "institutions."

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

29 (9)(a) "License" means a franchise, permit, certification,
30 approval, registration, charter, or similar form of authorization
31 required by law, but does not include (i) a license required solely for
32 revenue purposes, or (ii) a certification of an exclusive bargaining
33 representative, or similar status, under a collective bargaining law or
34 similar statute, or (iii) a license, franchise, or permission for use
35 of trademarks, symbols, and similar property owned or controlled by the
36 agency.

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

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

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

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

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

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

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

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

16 (b) A person named as a party in a judicial review or civil
17 enforcement proceeding, or allowed to participate as a party in a
18 judicial review or civil enforcement proceeding.

19 (13) "Person" means any individual, partnership, corporation,
20 association, governmental subdivision or unit thereof, or public or
21 private organization or entity of any character, and includes another
22 agency.

23 (14) "Policy statement" means a written description of the current
24 approach of an agency, entitled a policy statement by the agency head
25 or its designee, to implementation of a statute or other provision of
26 law, of a court decision, or of an agency order, including where
27 appropriate the agency's current practice, procedure, or method of
28 action based upon that approach.

29 (15) "Rule" means any agency order, directive, or regulation of
30 general applicability (a) the violation of which subjects a person to
31 a penalty or administrative sanction; (b) which establishes, alters, or
32 revokes any procedure, practice, or requirement relating to agency
33 hearings; (c) which establishes, alters, or revokes any qualification
34 or requirement relating to the enjoyment of benefits or privileges
35 conferred by law; (d) which establishes, alters, or revokes any
36 qualifications or standards for the issuance, suspension, or revocation
37 of licenses to pursue any commercial activity, trade, or profession; or
38 (e) which establishes, alters, or revokes any mandatory standards for
39 any product or material which must be met before distribution or sale.

1 The term includes the amendment or repeal of a prior rule, but does not
2 include (i) statements concerning only the internal management of an
3 agency and not affecting private rights or procedures available to the
4 public, (ii) declaratory rulings issued pursuant to RCW 34.05.240,
5 (iii) traffic restrictions for motor vehicles, bicyclists, and
6 pedestrians established by the secretary of transportation or his
7 designee where notice of such restrictions is given by official traffic
8 control devices, or (iv) rules of institutions of higher education
9 involving standards of admission, academic advancement, academic
10 credit, graduation and the granting of degrees, employment
11 relationships, or fiscal processes.

12 (16) "Rules review committee" or "committee" means the joint
13 administrative rules review committee created pursuant to RCW 34.05.610
14 for the purpose of selectively reviewing existing and proposed rules of
15 state agencies.

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

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

24 **Sec. 102.** RCW 34.05.030 and 1994 c 39 s 1 are each amended to read
25 as follows:

26 (1) This chapter shall not apply to:

27 (a) The state militia, or

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

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

32 (2) The provisions of RCW 34.05.410 through 34.05.598 shall not
33 apply:

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

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

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

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

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

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

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

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

21 ((+5)) (6) All other agencies, whether or not formerly
22 specifically excluded from the provisions of all or any part of the
23 Administrative Procedure Act, shall be subject to the entire act.

24 NEW SECTION. Sec. 103. On or before December 31, 1995, the
25 department of social and health services shall complete an analysis and
26 evaluation of the findings and recommendations contained in the 1994
27 legislative budget committee final report on "Nursing Home and Long-
28 Term Care - Part 1: Nursing Home Reimbursement." The department shall
29 report its recommendations for change, if any, to the house of
30 representatives health care and appropriations committees and the
31 senate health and human services and ways and means committees by such
32 date.

33 NEW SECTION. Sec. 104. If any part of this act is found to be in
34 conflict with federal requirements that are a prescribed condition to
35 the allocation of federal funds to the state, the conflicting part of
36 this act is inoperative solely to the extent of the conflict and with
37 respect to the agencies directly affected, and this finding does not

1 affect the operation of the remainder of this act in its application to
2 the agencies concerned. The rules under this act shall meet federal
3 requirements that are a necessary condition to the receipt of federal
4 funds by the state.

5 NEW SECTION. **Sec. 105.** If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

9 NEW SECTION. **Sec. 106.** This act is necessary for the immediate
10 preservation of the public peace, health, or safety, or support of the
11 state government and its existing public institutions, and shall take
12 effect July 1, 1995.

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