

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE SENATE BILL 5179

Chapter 277, Laws of 1997

(partial veto)

55th Legislature
1997 Regular Session

NURSING FACILITY REIMBURSEMENT--MODIFICATIONS

EFFECTIVE DATE: 7/27/97

Passed by the Senate April 19, 1997
YEAS 46 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House April 14, 1997
YEAS 88 NAYS 9

CLYDE BALLARD

**Speaker of the
House of Representatives**

Approved May 7, 1997, with the
exception of sections 7 and 8, which
are vetoed.

GARY LOCKE

Governor of the State of Washington

CERTIFICATE

I, Mike O Connell, Secretary of the
Senate of the State of Washington, do
hereby certify that the attached is
SECOND SUBSTITUTE SENATE BILL 5179 as
passed by the Senate and the House of
Representatives on the dates hereon
set forth.

MIKE O'CONNELL

Secretary

FILED

May 7, 1997 - 1:51 p.m.

**Secretary of State
State of Washington**

SECOND SUBSTITUTE SENATE BILL 5179

AS AMENDED BY THE HOUSE

Passed Legislature - 1997 Regular Session

State of Washington 55th Legislature 1997 Regular Session

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

Read first time 03/10/97.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (b) In computing the portion of net invested funds representing the
25 net book value of tangible fixed assets, the same assets, depreciation
26 bases, lives, and methods referred to in RCW 74.46.330, 74.46.350,
27 74.46.360, 74.46.370, ~~((and))~~ 74.46.380, and section 8 of this act,
28 including owned and leased assets, shall be utilized, except that the
29 capitalized cost of land upon which the facility is located and such
30 other contiguous land which is reasonable and necessary for use in the
31 regular course of providing resident care shall also be included.
32 Subject to provisions and limitations contained in this chapter, for
33 land purchased by owners or lessors before July 18, 1984, capitalized
34 cost of land shall be the buyer's capitalized cost. For all partial or
35 whole rate periods after July 17, 1984, if the land is purchased after
36 July 17, 1984, capitalized cost shall be that of the owner of record on
37 July 17, 1984, or buyer's capitalized cost, whichever is lower, except
38 that section 8 of this act shall be applied if the nursing facility

1 meets all of the criteria specified therein. In the case of leased
2 facilities where the net invested funds are unknown or the contractor
3 is unable to provide necessary information to determine net invested
4 funds, the secretary shall have the authority to determine an amount
5 for net invested funds based on an appraisal conducted according to RCW
6 74.46.360(1).

7 (c) In determining the variable return allowance:

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

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

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

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

38 (i) The financing allowance shall be recomputed substituting the
39 fair market value of the assets as of January 1, 1982, as determined by

1 the department of general administration through an appraisal
2 procedure, less accumulated depreciation on the lessor's assets since
3 January 1, 1982, for the net book value of the assets in determining
4 net invested funds for the facility. A determination by the department
5 of general administration of fair market value shall be final unless
6 the procedure used to make such determination is shown to be arbitrary
7 and capricious.

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

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

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

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

37 (3) Each biennium, beginning in 1985, the secretary shall review
38 the adequacy of return on investment rates in relation to anticipated
39 requirements for maintaining, reducing, or expanding nursing care

1 capacity. The secretary shall report the results of such review to the
2 legislature and make recommendations for adjustments in the return on
3 investment rates utilized in this section, if appropriate.

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

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

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

11 (b) The lessee purchased the leased nursing home after January 1,
12 1980; and

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

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

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

24 *Sec. 7 was vetoed. See message at end of chapter.

25 **NEW SECTION. Sec. 8. A new section is added to chapter 74.46 RCW*
26 *to read as follows:*

27 (1)(a) Notwithstanding any provision to the contrary in this
28 chapter, including RCW 74.46.360 and 74.46.410, for nursing facilities
29 meeting the criteria in (b) of this subsection, the allowable cost of
30 real and personal property assets shall be the lower of the actual cost
31 to the purchaser or the amount allowed under the COBRA asset cost
32 increase limitation for nursing facilities pursuant to 42 C.F.R.
33 447.253 (d)(2); however, if federally permitted, the department shall
34 use the consumer price index for all urban consumers (CPI-U) (United
35 States city average).

36 (b) Subsection (1)(a) of this section is applicable only to nursing
37 facilities which satisfy all of the following criteria: (i) The

1 original facility and any major renovations or remodeling, exceeding
2 the expenditure minimum established by the department of health
3 pursuant to chapter 70.38 RCW, is at least twenty years old on January
4 1, 1997; (ii) the facility has a licensed bed capacity of one hundred
5 sixty beds or greater on January 1, 1997; (iii) the facility's licensee
6 voluntarily banked licensed nursing facility beds during 1995 and 1996,
7 pursuant to chapter 70.38 RCW; (iv) the contractor has been the lessee
8 for a period of ten or more consecutive years by January 1, 1997; and
9 (v) the contractor lessee enters into a duly executed purchase
10 agreement with the arm's-length lessor after January 1, 1997, but prior
11 to January 1, 1998.

12 (2) The rate adjustment provided in subsection (1) of this section
13 shall be effective upon the completion of the nursing facility's
14 renovation project and only if the costs exceed four million dollars.

15 *Sec. 8 was vetoed. See message at end of chapter.

Passed the Senate April 19, 1997.

Passed the House April 14, 1997.

Approved by the Governor May 7, 1997, with the exception of certain
items that were vetoed.

Filed in Office of Secretary of State May 7, 1997.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to sections 7 and
3 8, Second Substitute Senate Bill No. 5179 entitled:

4 "AN ACT Relating to nursing facility reimbursement;"

5 Second Substitute Senate Bill No. 5179 seeks to address concerns of
6 owners of state nursing facilities by making corrections to the nursing
7 facility reimbursement system. The legislature has passed this bill to
8 ease the way for owners of nursing homes to make repairs and other
9 improvements to their facilities, for the benefit of those who reside
10 in those homes.

11 There are, however, two sections of this bill that have special
12 provisions for two particular homes, for which there are no extenuating
13 circumstances. Sections 7 and 8 both apply very narrow criteria to
14 grant rate enhancements to selected facilities above the rate they
15 would normally receive through the payment system.

16 Special treatment within the state's rate structure could invite
17 legal challenges from homes that do not benefit from this bill. These
18 provisions also invite increased federal scrutiny of the state Medicaid
19 plan, and could possibly jeopardize approval of the plan. Federal law
20 requires that the state reimbursement system must ensure that payments
21 are reasonable and adequate to meet the costs incurred by efficiently
22 and economically operated facilities. It would be difficult to argue
23 that the state's payment system complies with this requirement if the
24 law has special provisions for selected nursing homes, without
25 extenuating circumstances.

1 For these reasons, I have vetoed sections 7 and 8 of Second
2 Substitute Senate Bill No. 5179.

3 With the exception of sections 7 and 8, Second Substitute Senate
4 Bill No. 5179 is approved."