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HOUSE BILL 1123

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State of Washington

52nd Legislature

1991 Regular Session

By Representatives Braddock, Franklin and Orr; by request of Dept. of Social and Health Services.

Read first time January 21, 1991. Referred to Committee on Health Care.

1 AN ACT Relating to compliance with federal requirements concerning  
2 land, depreciable assets, and resident finances; amending RCW  
3 74.46.360, 74.46.410, 74.46.530, and 74.46.700; and repealing RCW  
4 74.46.710, 74.46.720, 74.46.730, 74.46.740, 74.46.750, and 74.46.760.

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

6 **Sec. 1.** RCW 74.46.360 and 1989 c 372 s 14 are each amended to read  
7 as follows:

8 (1) For all partial or whole rate periods after December 31, 1984,  
9 the cost basis of land and depreciation base of depreciable assets  
10 shall be the historical cost of the contractor or lessor, when the  
11 assets are leased by the contractor, in acquiring the asset in an  
12 arm's-length transaction and preparing it for use, less goodwill, and  
13 less accumulated depreciation, if applicable, which has been incurred  
14 during periods that the assets have been used in or as a facility by  
15 any contractor, such accumulated depreciation to be measured in

1 accordance with subsections (2), (3), and (4) of this section and RCW  
2 74.46.350 and 74.46.370. If the department challenges the historical  
3 cost of an asset, or if the contractor cannot or will not provide the  
4 historical costs, the department will have the department of general  
5 administration, through an appraisal procedure, determine the fair  
6 market value of the assets at the time of purchase. The cost basis of  
7 land and depreciation base of ((the)) depreciable assets will not  
8 exceed such fair market value.

9 (2) The historical cost of depreciable and nondepreciable donated  
10 assets, or of depreciable and nondepreciable assets received through  
11 testate or intestate distribution, shall be the lesser of:

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

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

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

18 (4) (a) Where land or depreciable assets are acquired that were  
19 used in the medical care program subsequent to January 1, 1980, the  
20 cost basis or depreciation base of the assets will not exceed the net  
21 book value which did exist or would have existed had the assets  
22 continued in use under the previous contract with the department;  
23 except that depreciation shall not be assumed to accumulate during  
24 periods when the assets were not in use in or as a facility.

25 (b) The provisions of (a) of this subsection shall not apply to the  
26 most recent arm's-length acquisition if it occurs at least ten years  
27 after the ownership of the assets has been previously transferred in an  
28 arm's-length transaction nor to the first arm's-length acquisition that  
29 occurs after January 1, 1980, for facilities participating in the  
30 medical care program prior to January 1, 1980. The new cost basis or

1 depreciation base for such acquisitions shall not exceed the fair  
2 market value of the assets as determined by the department of general  
3 administration through an appraisal procedure. A determination by the  
4 department of general administration of fair market value shall be  
5 final unless the procedure used to make such determination is shown to  
6 be arbitrary and capricious. For all partial or whole rate periods  
7 after July 17, 1984, this subsection is inoperative for any transfer of  
8 ownership of any asset, depreciable or nondepreciable, occurring on or  
9 after July 18, 1984, leaving (a) of this subsection to apply alone to  
10 such transfers: PROVIDED, HOWEVER, That this subsection shall apply to  
11 transfers of ownership of assets occurring prior to January 1, 1985, if  
12 the costs of such assets have never been reimbursed under medicaid cost  
13 reimbursement on an owner-operated basis or as a related-party lease:  
14 PROVIDED FURTHER, That for any contractor that can document in writing  
15 an enforceable agreement for the purchase of a nursing home dated prior  
16 to July 18, 1984, and submitted to the department prior to January 1,  
17 1988, the cost basis of allowable land and the depreciation base of the  
18 nursing home, for rates established after July 18, 1984, shall not  
19 exceed the fair market value of the assets at the date of purchase as  
20 determined by the department of general administration through an  
21 appraisal procedure. For medicaid cost reimbursement purposes, an  
22 agreement to purchase a nursing home dated prior to July 18, 1984, is  
23 enforceable, even though such agreement contains no legal description  
24 of the real property involved, notwithstanding the statute of frauds or  
25 any other provision of law.

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

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

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

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

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

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

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

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

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

1       **Sec. 2.** RCW 74.46.410 and 1989 c 372 s 2 are each amended to read  
2 as follows:

3       (1) Costs will be unallowable if they are not documented,  
4 necessary, ordinary, and related to the provision of care services to  
5 authorized patients.

6       (2) Unallowable costs include, but are not limited to, the  
7 following:

8       (a) Costs of items or services not covered by the medical care  
9 program. Costs of such items or services will be unallowable even if  
10 they are indirectly reimbursed by the department as the result of an  
11 authorized reduction in patient contribution;

12       (b) Costs of services and items provided to recipients which are  
13 covered by the department's medical care program but not included in  
14 care services established by the department under this chapter;

15       (c) Costs associated with a capital expenditure subject to section  
16 1122 approval (part 100, Title 42 C.F.R.) if the department found it  
17 was not consistent with applicable standards, criteria, or plans. If  
18 the department was not given timely notice of a proposed capital  
19 expenditure, all associated costs will be unallowable up to the date  
20 they are determined to be reimbursable under applicable federal  
21 regulations;

22       (d) Costs associated with a construction or acquisition project  
23 requiring certificate of need approval pursuant to chapter 70.38 RCW if  
24 such approval was not obtained;

25       (e) Interest costs other than those provided by RCW 74.46.290 on  
26 and after the effective date of RCW 74.46.530;

27       (f) Salaries or other compensation of owners, officers, directors,  
28 stockholders, and others associated with the contractor or home office,  
29 except compensation paid for service related to patient care;

1 (g) Costs in excess of limits or in violation of principles set  
2 forth in this chapter;

3 (h) Costs resulting from transactions or the application of  
4 accounting methods which circumvent the principles of the cost-related  
5 reimbursement system set forth in this chapter;

6 (i) Costs applicable to services, facilities, and supplies  
7 furnished by a related organization in excess of the lower of the cost  
8 to the related organization or the price of comparable services,  
9 facilities, or supplies purchased elsewhere;

10 (j) Bad debts of non-Title XIX recipients. Bad debts of Title XIX  
11 recipients are allowable if the debt is related to covered services, it  
12 arises from the recipient's required contribution toward the cost of  
13 care, the provider can establish that reasonable collection efforts  
14 were made, the debt was actually uncollectible when claimed as  
15 worthless, and sound business judgment established that there was no  
16 likelihood of recovery at any time in the future;

17 (k) Charity and courtesy allowances;

18 (l) Cash, assessments, or other contributions, excluding dues, to  
19 charitable organizations, professional organizations, trade  
20 associations, or political parties, and costs incurred to improve  
21 community or public relations;

22 (m) Vending machine expenses;

23 (n) Expenses for barber or beautician services not included in  
24 routine care;

25 (o) Funeral and burial expenses;

26 (p) Costs of gift shop operations and inventory;

27 (q) Personal items such as cosmetics, smoking materials, newspapers  
28 and magazines, and clothing, except those used in patient activity  
29 programs;

1 (r) Fund-raising expenses, except those directly related to the  
2 patient activity program;

3 (s) Penalties and fines;

4 (t) Expenses related to telephones, televisions, radios, and  
5 similar appliances in patients' private accommodations;

6 (u) Federal, state, and other income taxes;

7 (v) Costs of special care services except where authorized by the  
8 department;

9 (w) Expenses of key-man insurance and other insurance or retirement  
10 plans not made available to all employees;

11 (x) Expenses of profit-sharing plans;

12 (y) Expenses related to the purchase and/or use of private or  
13 commercial airplanes which are in excess of what a prudent contractor  
14 would expend for the ordinary and economic provision of such a  
15 transportation need related to patient care;

16 (z) Personal expenses and allowances of owners or relatives;

17 (aa) All expenses of maintaining professional licenses or  
18 membership in professional organizations;

19 (bb) Costs related to agreements not to compete;

20 (cc) Amortization of goodwill;

21 (dd) Expenses related to vehicles which are in excess of what a  
22 prudent contractor would expend for the ordinary and economic provision  
23 of transportation needs related to patient care;

24 (ee) Legal and consultant fees in connection with a fair hearing  
25 against the department where a decision is rendered in favor of the  
26 department or where otherwise the determination of the department  
27 stands;

28 (ff) Legal and consultant fees of a contractor or contractors in  
29 connection with a lawsuit against the department;

1 (gg) Lease acquisition costs and other intangibles not related to  
2 patient care;

3 (hh) All rental or lease costs other than those provided in RCW  
4 74.46.300 on and after the effective date of RCW 74.46.510 and  
5 74.46.530;

6 (ii) Postsurvey charges incurred by the facility as a result of  
7 subsequent inspections under RCW 18.51.050 which occur beyond the first  
8 postsurvey visit during the certification survey calendar year;

9 (jj) Costs and fees otherwise allowable for legal services, whether  
10 purchased, allocated by a home office, regional office or management  
11 company, or performed by the contractor or employees of the contractor,  
12 in excess of the eighty-fifth percentile of such costs reported by all  
13 contractors for the most recent cost report period: PROVIDED, That this  
14 limit shall not apply if a contractor has not exceeded this percentile  
15 in any of the preceding three annual cost report periods;

16 (kk) Costs and fees otherwise allowable for accounting and  
17 bookkeeping services, whether purchased, allocated by a home office,  
18 regional office or management company, or performed by the contractor  
19 or employees of the contractor, in excess of the eighty-fifth  
20 percentile of such costs reported by all contractors for the most  
21 recent cost report period: PROVIDED, That this limit shall not apply  
22 if a contractor has not exceeded this percentile in any of the  
23 preceding three annual cost report periods;

24 (ll) For all partial or whole rate periods after July 17, 1984,  
25 costs of land and depreciable assets which cannot be reimbursed under  
26 the Deficit Reduction Act of 1984 and implementing state statutory and  
27 regulatory provisions.

28 **Sec. 3.** RCW 74.46.530 and 1985 c 361 s 17 are each amended to read  
29 as follows:

1 (1) The department shall establish for individual facilities return  
2 on investment allowances composed of two parts: A financing allowance  
3 and a variable return allowance.

4 (a) The financing allowance shall be determined by multiplying the  
5 net invested funds of each facility by .11, and dividing by the  
6 contractor's total patient days. If a capitalized addition or  
7 retirement of an asset will result in a different licensed bed capacity  
8 during the ensuing period, the prior period total patient days used in  
9 computing the financing and variable return allowances shall be  
10 adjusted to the anticipated patient day level.

11 (b) In computing the portion of net invested funds representing the  
12 net book value of tangible fixed assets, the same assets, depreciation  
13 bases, lives, and methods referred to in RCW 74.46.330, 74.46.350,  
14 74.46.360, and 74.46.370, including owned and leased assets, shall be  
15 utilized, except that the capitalized cost of land upon which the  
16 facility is located and such other contiguous land which is reasonable  
17 and necessary for use in the regular course of providing patient care  
18 shall also be included. Subject to provisions and limitations  
19 contained in this chapter, for land purchased by owners or lessors  
20 before July 18, 1984, capitalized cost of land shall be the buyer's  
21 capitalized cost. For all partial or whole rate periods after July 17,  
22 1984, if the land is purchased after July 17, 1984, capitalized cost  
23 shall be that of the owner of record on July 17, 1984, or buyer's  
24 capitalized cost, whichever is lower. In the case of leased facilities  
25 where the net invested funds are unknown or the contractor is unable to  
26 provide necessary information to determine net invested funds, the  
27 secretary shall have the authority to determine an amount for net  
28 invested funds based on an appraisal conducted according to RCW  
29 74.46.360(1).

30 (c) In determining the variable return allowance:

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

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

14 (d) The sum of the financing allowance and the variable return  
15 allowance shall be the return on investment for each facility, and  
16 shall be added to the prospective rates of each contractor as  
17 determined in RCW 74.46.450 through 74.46.510.

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

27 (i) The financing allowance shall be recomputed substituting the  
28 fair market value of the assets as of January 1, 1982, as determined by  
29 the department of general administration through an appraisal  
30 procedure, less accumulated depreciation on the lessor's assets since

1 January 1, 1982, for the net book value of the assets in determining  
2 net invested funds for the facility. A determination by the department  
3 of general administration of fair market value shall be final unless  
4 the procedure used to make such determination is shown to be arbitrary  
5 and capricious.

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

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

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

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

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

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

11 **Sec. 4.** RCW 74.46.700 and 1980 c 177 s 70 are each amended to read  
12 as follows:

13 ~~((1))~~ Each ~~((contractor))~~ nursing home shall establish and  
14 maintain, as a service to the ~~((medical care recipient))~~ resident, a  
15 bookkeeping system incorporated into the business records for all  
16 ~~((recipient))~~ resident moneys entrusted to the contractor and received  
17 by the facility for the ~~((recipient))~~ resident.

18 ~~((2) Such system will apply to a recipient who is:~~

19 ~~(a) Incapable of handling his or her own money and the department  
20 or the recipient's guardian, relative, or physician makes written  
21 request of the facility to accept this responsibility; or~~

22 ~~(b) Capable of handling his or her own money, but requests the  
23 facility in writing to accept this responsibility.~~

24 ~~(3) The written requests provided in subsection (2) of this section  
25 shall be maintained by the contractor in the recipient's file.~~

26 ~~(4) The recipient must be given at least a quarterly reporting of  
27 all financial transactions in his or her trust account. The  
28 representative payee, the guardian, and/or other designated agents of~~

1 ~~the recipient must be sent a copy of said reporting on the same basis~~  
2 ~~as the recipient.))~~

3 The department shall promulgate regulations to ensure that resident  
4 personal funds handled by the facility are maintained by each nursing  
5 home in a manner that is, at a minimum, consistent with federal  
6 requirements.

7 NEW SECTION. Sec. 5. The following acts or parts of acts are each  
8 repealed:

- 9 (1) RCW 74.46.710 and 1983 1st ex.s. c 67 s 37 & 1980 c 177 s 71;  
10 (2) RCW 74.46.720 and 1983 1st ex.s. c 67 s 38 & 1980 c 177 s 72;  
11 (3) RCW 74.46.730 and 1980 c 177 s 73;  
12 (4) RCW 74.46.740 and 1980 c 177 s 74;  
13 (5) RCW 74.46.750 and 1980 c 177 s 75; and  
14 (6) RCW 74.46.760 and 1985 c 7 s 149 & 1980 c 177 s 76.