
SECOND SUBSTITUTE SENATE BILL 5622

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

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

Read first time 3/27/95.

1 AN ACT Relating to long-term care; amending RCW 74.39A.007,
2 74.39A.010, 70.128.005, 70.128.007, 70.128.010, 70.128.057, 70.128.060,
3 70.128.070, 70.128.120, 70.128.040, 70.128.050, 70.128.055, 70.128.080,
4 70.128.090, 70.128.105, 70.128.110, 70.128.170, 70.128.130, 70.128.140,
5 70.128.150, 70.128.160, 70.128.175, 43.190.020, 43.190.060, 74.08.545,
6 74.08.550, 74.08.570, 18.79.040, 18.79.260, 18.88A.030, 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, and 74.46.010; adding new sections to chapter 74.39A RCW;
14 adding new sections to chapter 70.128 RCW; adding new sections to
15 chapter 18.79 RCW; adding a new section to chapter 18.51 RCW; adding
16 new sections to chapter 74.42 RCW; adding a new section to chapter
17 74.46 RCW; creating new sections; recodifying RCW 74.08.530, 74.08.560,
18 74.08.570, 74.08.545, and 74.08.550; repealing RCW 70.128.180 and
19 74.08.541; prescribing penalties; providing an effective date; and
20 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 preferences and concerns.

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.

31 (5) The department may not provide the substance of the complaint
32 to the licensee or contractor before the completion of the
33 investigation by the department. Neither the substance of the
34 complaint provided to the licensee or contractor nor any copy of the
35 complaint or related report published, released, or made otherwise
36 available shall disclose the name, title, or identity of any
37 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 in boarding homes licensed under chapter 18.20
16 RCW or boarding homes located within the boundaries of a federally
17 recognized Indian reservation and licensed by a tribe. The department
18 shall ((develop)) adopt rules for facilities that contract with the
19 department for assisted living to establish:

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

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

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

25 (2) The department's rules shall provide that ((ensure that the
26 contracted)) assisted living services:

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

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

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

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

37 ((+5)) (e) Are provided in compliance with applicable ((department
38 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 in boarding
5 homes licensed under chapter 18.20 RCW or boarding homes located within
6 the boundaries of a federally recognized Indian reservation and
7 licensed by a tribe.

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

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

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

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

15 (3) The department's rules shall provide that adult residential
16 care services:

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

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

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

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

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

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

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

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

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

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

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

15 (c) Order stop placement;

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

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

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

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

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

34 The legislature finds that:

35 (1) Adult ((family)) care homes are an important part of the
36 state's long-term care system. Adult ((family)) care homes provide an
37 alternative to institutional care and promote a high degree of
38 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 ((ef)) 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,)) may authorize
5 nonresident providers through standards as 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 home
11 if the department finds that the applicant and the home are in
12 compliance with this chapter and the rules adopted under this chapter;
13 and that the applicant has no prior violations of this chapter relating
14 to the adult family home subject to the application or any other adult
15 family home, or of any other law regulating residential care facilities
16 within the past five years that resulted in revocation or nonrenewal of
17 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 (3) The license fee shall be submitted with the application.

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

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

35 ((5) A provider shall not be licensed for more than one adult
36 family home. Exceptions may be authorized by the department for good
37 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) The department shall establish, by rule, standards used to
4 license nonresident providers and multiple facility operators.

5 (7) 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. The department shall not, however, inspect
26 an adult care home operated by a resident provider at night except for
27 good cause.

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

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

35 An adult ((family)) care home provider shall have the following
36 minimum qualifications:

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

- 1 (2) Good moral and responsible character and reputation;
- 2 (3) Literacy; ((and))
- 3 (4) Management and administrative ability to carry out the
- 4 requirements of this chapter;
- 5 (5) Satisfactory completion of department-approved initial training
- 6 and continuing education training as specified by the department in
- 7 rule;
- 8 (6) Satisfactory completion of department-approved, or equivalent,
- 9 special care training before a provider may provide special care
- 10 services to a resident; and
- 11 (7) Not been convicted of any crime listed in RCW 43.43.830 and
- 12 43.43.842.

13 **Sec. 19.** RCW 70.128.040 and 1989 c 427 s 18 are each amended to

14 read as follows:

15 (1) The department shall adopt rules and standards with respect to

16 all adult ((family)) care homes and the operators thereof to be

17 licensed under this chapter to carry out the purposes and requirements

18 of this chapter. In developing rules and standards the department

19 shall recognize the residential family-like nature of adult ((family))

20 care homes and not develop rules and standards which by their

21 complexity serve as an overly restrictive barrier to the development of

22 the adult ((family)) care homes in the state. Procedures and forms

23 established by the department shall be developed so they are easy to

24 understand and comply with. Paper work requirements shall be minimal.

25 Easy to understand materials shall be developed for homes explaining

26 licensure requirements and procedures.

27 (2) During the initial stages of development of proposed rules, the

28 department shall provide notice of development of the rules to

29 organizations representing adult ((family)) care homes and their

30 residents, and other groups that the department finds appropriate. The

31 notice shall state the subject of the rules under consideration and

32 solicit written recommendations regarding their form and content.

33 (3) Except where provided otherwise, chapter 34.05 RCW shall govern

34 all department rule-making and adjudicative activities under this

35 chapter.

36 **Sec. 20.** RCW 70.128.050 and 1989 c 427 s 19 are each amended to

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

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

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

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

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

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

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

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

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

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

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

13 (5) Monitoring should be outcome-based and responsive to consumer
14 complaints.

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

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

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

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

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

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

32 (d) Willfully prevented or interfered with any inspection or
33 investigation by the department.

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

36 (a) Refuse to issue a license;

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

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

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

7 ((e)) (e) Suspend admissions to the adult ((family)) care home by
8 imposing stop placement.

9 (3) When the department orders stop placement, the facility shall
10 not admit any person until the stop placement order is terminated. The
11 department may approve readmission of a resident to the facility from
12 a hospital or nursing home during the stop placement. The department
13 shall terminate the stop placement when: (a) The violations
14 necessitating the stop placement have been corrected; and (b) the
15 provider exhibits the capacity to maintain adequate care and service.

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

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

22 (1) Unless the context clearly requires otherwise, these
23 definitions shall apply throughout this section and RCW 35.63.140,
24 35A.63.149, 36.70.755, 35.22.680, 36.32.560, and 70.128.180:

25 (a) "Adult ((family)) care home" means a ((facility licensed
26 pursuant to chapter 70.128 RCW or the)) regular family abode ((of)) in
27 which a person or persons ((who are providing)) provide personal care,
28 special care, room, and board to more than one but not more than six
29 adults who are not related by blood or marriage to the person or
30 persons providing the services.

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

34 (c) "Department" means the department of social and health
35 services.

36 (2) An adult ((family)) care home shall be considered a residential
37 use of property for zoning purposes. Adult ((family)) care homes shall

1 be a permitted use in all areas zoned for residential or commercial
2 purposes, including areas zoned for single family dwellings.

3 **NEW SECTION.** **Sec. 34.** A new section is added to chapter 70.128
4 RCW to read as follows:

5 (1) The department shall maintain a toll-free telephone number for
6 receiving complaints regarding adult care homes, as provided in section
7 6 of this act.

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

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

18 **NEW SECTION.** **Sec. 35.** RCW 70.128.180 and 1989 c 427 s 41 are each
19 repealed.

20 **Sec. 36.** RCW 43.190.020 and 1991 sp.s. c 8 s 3 are each amended to
21 read as follows:

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

25 (1) A facility which:

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

30 (b) Provides supportive, restorative, and preventive health
31 services in conjunction with a socially oriented program to its
32 residents, and which maintains and operates twenty-four hour services
33 including board, room, personal care, and intermittent nursing care.
34 "Long-term health care facility" includes nursing homes and nursing
35 facilities, but does not include acute care hospital or other licensed

1 facilities except for that distinct part of the hospital or facility
2 which provides nursing facility services.

3 (2) Any family home, group care facility, or similar facility
4 determined by the secretary, for twenty-four hour nonmedical care of
5 persons in need of personal services, supervision, or assistance
6 essential for sustaining the activities of daily living or for the
7 protection of the individual.

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

9 **Sec. 37.** RCW 43.190.060 and 1987 c 158 s 3 are each amended to
10 read as follows:

11 A long-term care ombudsman shall:

12 (1) Investigate and resolve complaints made by or on behalf of
13 ((older individuals who are)) residents of long-term care facilities
14 relating to administrative action which may adversely affect the
15 health, safety, welfare, and rights of these individuals;

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

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

21 (4) Provide for training volunteers and promoting the development
22 of citizen organizations to participate in the ombudsman program. A
23 volunteer long-term care ombudsman shall be able to identify and
24 resolve problems regarding the care of residents in long-term care
25 facilities and to assist such residents in the assertion of their civil
26 and human rights. However, volunteers shall not be used for complaint
27 investigations but may engage in fact-finding activities to determine
28 whether a formal complaint should be submitted to the department.

29 NEW SECTION. **Sec. 38.** RCW 74.08.530, 74.08.560, 74.08.570,
30 74.08.545, and 74.08.550 are each recodified in chapter 74.39A RCW.

31 NEW SECTION. **Sec. 39.** RCW 74.08.541 and 1989 c 427 s 4, 1986 c
32 222 s 1, 1983 1st ex.s. c 41 s 39, & 1981 1st ex.s. c 6 s 17 are each
33 repealed.

34 **Sec. 40.** RCW 74.08.545 and 1989 c 427 s 5 are each amended to read
35 as follows:

1 It is the intent of the legislature that chore services be provided
2 to eligible persons within the limits of funds appropriated for that
3 purpose. Therefore, the department shall provide services only to
4 those persons identified as at risk of being placed in a long-term care
5 facility in the absence of such services. The department shall not
6 provide chore services to any individual who is eligible for, and whose
7 needs can be met by another community service administered by the
8 department at less cost to the state. Chore services shall be provided
9 to the extent necessary to maintain a safe and healthful living
10 environment. It is the policy of the state to encourage the
11 development of volunteer chore services in local communities as a means
12 of meeting chore care service needs and directing financial resources.
13 In determining eligibility for chore services, the department shall
14 consider the following:

15 (1) The kind of services needed;

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

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

21 (4) Such other factors as the department considers necessary to
22 insure service is provided only to those persons whose chore service
23 needs cannot be met by relatives, friends, nonprofit organizations,
24 ((or)) other persons, or by other programs or resources.

25 In determining the level of services to be provided under this
26 chapter, ((the)) the client shall be assessed using an instrument
27 designed by the department to determine the level of functional
28 disability, the need for service and the person's risk of long-term
29 care facility placement.

30 NEW SECTION. **Sec. 41.** A new section is added to chapter 74.39A
31 RCW to read as follows:

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

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

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

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

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

6 (2) The department shall require a client to participate in the
7 cost of chore services as a necessary precondition to receiving chore
8 services paid for by the state. The client and their at-home spouse
9 shall retain an amount equal to one hundred percent of the federal
10 poverty level, adjusted for household size, for maintenance needs. The
11 department shall consider the remaining income as the client
12 participation amount for chore services except for those persons whose
13 participation is established under RCW 74.08.570.

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

16 **Sec. 42.** RCW 74.08.550 and 1989 c 427 s 6 are each amended to read
17 as follows:

18 (1) The department is authorized to develop a program to provide
19 for ((those)) chore services ((enumerated in RCW 74.08.541)) under this
20 chapter.

21 (2) The department may provide assistance in the recruiting of
22 providers of the services enumerated in ((RCW 74.08.541)) section 41 of
23 this act and seek to assure the timely provision of services in
24 emergency situations.

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

29 **Sec. 43.** RCW 74.08.570 and 1989 c 427 s 7 are each amended to read
30 as follows:

31 (1) An otherwise eligible disabled person shall not be deemed
32 ineligible for chore services under this chapter if the person's gross
33 income from employment, adjusted downward by the cost of the chore
34 services to be provided and the disabled person's work expenses, does
35 not exceed the maximum eligibility standard established by the
36 department for such chore services. The department shall establish a
37 ((sliding scale fee schedule for)) methodology for client participation

1 that allows such disabled persons((~~taking into consideration the~~
2 ~~person's ability to pay and work expenses~~) to be employed.

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

7 (3) As used in this section:

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

10 (b) "Work expenses" includes:

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

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

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

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

21 (d) "Disabled" means:

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

25 (ii) Eighteen years of age or older;

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

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

29 NEW SECTION. **Sec. 44.** A new section is added to chapter 18.79 RCW
30 to read as follows:

31 The legislature recognizes that nurses have been successfully
32 delegating nursing care tasks to family members and auxiliary staff for
33 many years. The opportunity for a nurse to delegate to nursing
34 assistants qualifying under section 45 of this act may enhance the
35 viability and quality of care in community health settings for long-
36 term care services and to allow citizens to live as independently as
37 possible with maximum safeguards.

1 **NEW SECTION.** **Sec. 45.** A new section is added to chapter 18.79 RCW
2 to read as follows:

3 (1) A nurse may delegate specific care tasks to nursing assistants
4 meeting the requirements of this section and who provide care to
5 individuals in community residential programs for the developmentally
6 disabled certified by the department of social and health services
7 under chapter 71A.12 RCW, to individuals residing in adult family homes
8 licensed under chapter 70.128 RCW, and to individuals residing in
9 boarding homes licensed under chapter 18.20 RCW contracting with the
10 department of social and health services to provide assisted living
11 services pursuant to RCW 74.39A.010.

12 (2) For the purposes of this section, "nursing assistant" means a
13 nursing assistant-registered or a nursing assistant-certified. Nothing
14 in this section may be construed to affect the authority of nurses to
15 delegate nursing tasks to other persons, including licensed practical
16 nurses, as authorized by law.

17 (3) Before commencing any specific nursing care tasks authorized
18 under this chapter and chapter 18.88A RCW, the nursing assistant must
19 (a) provide to the delegating nurse a certificate of completion issued
20 by the department of social and health services indicating the
21 completion of basic core training as provided in this section, (b) be
22 regulated by the department of health pursuant to this chapter and
23 chapter 18.88A RCW, subject to the uniform disciplinary act under
24 chapter 18.130 RCW, and (c) meet any additional training requirements
25 identified by the nursing care quality assurance commission and
26 authorized by this section.

27 (4) A nurse may delegate the following care tasks:

28 (a) Oral and topical medications and ointments;

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

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

32 (d) Suppositories, enemas, ostomy care;

33 (e) Blood glucose monitoring;

34 (f) Gastrostomy feedings in established and healed condition.

35 (5) On or before September 1, 1995, the nursing care quality
36 assurance commission, in conjunction with the professional nursing
37 organizations, shall develop rules for nurse delegation protocols and
38 by December 5, 1995, identify training beyond the core training that is
39 deemed necessary for the delegation of complex tasks and patient care.

1 (6) Nursing task delegation protocols are not intended to regulate
2 the settings in which delegation may occur but are intended to ensure
3 that nursing care services have a consistent standard of practice upon
4 which the public and profession may rely and to safeguard the authority
5 of the nurse to make independent professional decisions regarding the
6 delegation of a task. Protocols shall include at least the following:

7 (a) Ensure that determination of the appropriateness of delegation
8 of a nursing task is at the discretion of the nurse;

9 (b) Allow delegation of a nursing care task only for patients who
10 have a stable and predictable condition. "Stable and predictable
11 condition" means a situation, as defined by rule by the nursing care
12 quality assurance commission, in which the patient's clinical and
13 behavioral status is known and does not require frequent presence and
14 evaluation of a registered nurse;

15 (c) Assure that the delegations of nursing tasks pursuant to this
16 chapter and chapter 18.88A RCW have the written informed consent of the
17 patient consistent with the provisions for informed consent under
18 chapter 7.70 RCW, as well as with the consent of the delegating nurse
19 and nursing assistant. The delegating nurse shall inform patients of
20 the level of training of all care providers in the setting;

21 (d) Verify that the nursing assistant has completed the core
22 training;

23 (e) Require assessment by the nurse of the ability and willingness
24 of the nursing assistant to perform the delegated nursing task in the
25 absence of direct nurse supervision and to refrain from delegation if
26 the nursing assistant is not able or willing to perform the task;

27 (f) Require the nurse to analyze the complexity of the nursing task
28 that is considered for delegation and determine the appropriate level
29 of training and any need of additional training for the nursing
30 assistant;

31 (g) Require the teaching of the nursing care task to the nursing
32 assistant including return demonstration under observation while
33 performing the task;

34 (h) Require a plan of nursing supervision and reevaluation of the
35 delegated nursing task. "Nursing supervision" means that the
36 registered nurse monitors by direct observation the skill and ability
37 of the nursing assistant to perform delegated nursing tasks. Frequency
38 of supervision is at the discretion of the registered nurse but shall
39 occur at least every sixty days;

1 (i) Require instruction to the nursing assistant that the delegated
2 nursing task is specific to a patient and is not transferable;

3 (j) Require documentation and written instruction related to the
4 delegated nursing task be provided to the nursing assistant and a copy
5 maintained in the patient record;

6 (k) Ensure that the nursing assistant is prepared to effectively
7 deal with the predictable outcomes of performing the nursing task;

8 (l) Include in the delegation of tasks an awareness of the nature
9 of the condition requiring treatment, risks of the treatment, side
10 effects, and interaction of prescribed medications;

11 (m) Require documentation in the patient's record of the rationale
12 for delegating or not delegating nursing tasks.

13 (7) A basic core training curriculum on providing care for
14 individuals in community residential programs for the developmentally
15 disabled certified by the department of social and health services
16 under chapter 71A.12 RCW shall be in addition to the specific nursing
17 assistant training specified in this section. Such additional training
18 shall be developed and adopted by rule by the secretary of the
19 department of social and health services. The department of social and
20 health services shall appoint an advisory panel to assist in the
21 development of core training comprised of representatives of the
22 following:

23 (a) The division of developmental disabilities;

24 (b) The nursing care quality assurance commission;

25 (c) Professional nursing organizations;

26 (d) A state-wide organization of community residential service
27 providers whose members are programs certified by the department under
28 chapter 71A.12 RCW.

29 (8) A basic core training curriculum on providing care to residents
30 in residential settings licensed under chapter 70.128 RCW, or in
31 assisted living pursuant to RCW 74.39A.010 shall be mandatory for
32 nursing assistants prior to assessment by a nurse regarding the ability
33 and willingness to perform a delegated nursing task. Core training
34 shall be developed and adopted by rule by the secretary of the
35 department of social and health services, in conjunction with an
36 advisory panel. The advisory panel shall be comprised of
37 representatives from, at a minimum, the following:

38 (a) The nursing care quality assurance commission;

39 (b) Professional nurse organizations;

1 (c) A state-wide association of community residential service
2 providers whose members are programs certified by the department under
3 chapter 71A.12 RCW;
4 (d) Aging consumer groups;
5 (e) Associations representing homes licensed under chapter 70.127
6 RCW; and
7 (f) Associations representing home care agencies licensed under
8 chapter 70.127 RCW.

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

11 On or before December 1, 1995, the department of health and the
12 department of social and health services, in consultation with the
13 nursing care quality assurance commission, shall develop and clarify
14 program and reimbursement policies, as well as clarify barriers to
15 current delegation, relating to the ability and authority of a nurse to
16 delegate care tasks in the programs and services operating under their
17 authority.

18 The nursing care quality assurance commission shall develop model
19 forms that will assist in standardizing the practice of delegation.

20 **NEW SECTION.** **Sec. 47.** A new section is added to chapter 18.79 RCW
21 to read as follows:

22 (1) The nurse and nursing assistant shall be accountable for their
23 own individual actions in the delegation process. Nurses acting within
24 the protocols of their delegation authority shall be immune from
25 liability for any action performed in the course of their delegation
26 duties. Nursing assistants following written delegation instructions
27 from registered nurses performed in the course of their accurately
28 written, delegated duties shall be immune from liability.

29 (2) No person may coerce a nurse into compromising patient safety
30 by requiring the nurse to delegate if the nurse determines it is
31 inappropriate to do so. Nurses shall not be subject to any employer
32 reprisal or disciplinary action by the Washington nursing care quality
33 assurance commission for refusing to delegate tasks or refusing to
34 provide the required training for delegation if the nurse determines
35 delegation may compromise patient safety. Nursing assistants shall not
36 be subject to any employer reprisal or disciplinary action by the
37 nursing care quality assurance commission for refusing to accept

1 delegation of a nursing task. No community residential program, adult
2 family home, or boarding home contracting to provide assisted-living
3 services may discriminate or retaliate in any manner against a person
4 because the person made a complaint or cooperated in the investigation
5 of a complaint.

6 **NEW SECTION.** **Sec. 48.** A new section is added to chapter 18.79 RCW
7 to read as follows:

8 The aging and adult services administration of the department of
9 social and health services shall establish a toll-free telephone number
10 for receiving complaints regarding delegation of specific nursing tasks
11 to nursing assistants, in conjunction with any other such system
12 maintained for long-term care services. Complaints specifically
13 related to nurse-delegation shall be referred to the nursing care
14 quality assurance commission for appropriate disposition in accordance
15 with established procedures.

16 **Sec. 49.** RCW 18.79.040 and 1994 sp.s. c 9 s 404 are each amended
17 to read as follows:

18 (1) "Registered nursing practice" means the performance of acts
19 requiring substantial specialized knowledge, judgment, and skill based
20 on the principles of the biological, physiological, behavioral, and
21 sociological sciences in either:

22 (a) The observation, assessment, diagnosis, care or counsel, and
23 health teaching of the ill, injured, or infirm, or in the maintenance
24 of health or prevention of illness of others;

25 (b) The performance of such additional acts requiring education and
26 training and that are recognized by the medical and nursing professions
27 as proper and recognized by the commission to be performed by
28 registered nurses licensed under this chapter and that are authorized
29 by the commission through its rules;

30 (c) The administration, supervision, delegation, and evaluation of
31 nursing practice. However, nothing in this subsection affects the
32 authority of a hospital, hospital district, medical clinic, or office,
33 concerning its administration and supervision;

34 (d) The teaching of nursing;

35 (e) The executing of medical regimen as prescribed by a licensed
36 physician and surgeon, dentist, osteopathic physician and surgeon,

1 podiatric physician and surgeon, physician assistant, osteopathic
2 physician assistant, or advanced registered nurse practitioner.

3 (2) Nothing in this section prohibits a person from practicing a
4 profession for which a license has been issued under the laws of this
5 state or specifically authorized by any other law of the state of
6 Washington.

7 (3) This section does not prohibit (a) the nursing care of the
8 sick, without compensation, by an unlicensed person who does not hold
9 himself or herself out to be a registered nurse, ((or)) (b) the
10 practice of licensed practical nursing by a licensed practical nurse,
11 or (c) the practice of a nursing assistant, providing delegated nursing
12 tasks under chapter 18.88A RCW and this chapter.

13 **Sec. 50.** RCW 18.79.260 and 1994 sp.s. c 9 s 426 are each amended
14 to read as follows:

15 A registered nurse under his or her license may perform for
16 compensation nursing care, as that term is usually understood, of the
17 ill, injured, or infirm, and in the course thereof, she or he may do
18 the following things that shall not be done by a person not so
19 licensed, except as provided in RCW 18.79.270 and section 45 of this
20 act:

21 (1) At or under the general direction of a licensed physician and
22 surgeon, dentist, osteopathic physician and surgeon, podiatric
23 physician and surgeon, physician assistant, osteopathic physician
24 assistant, or advanced registered nurse practitioner acting within the
25 scope of his or her license, administer medications, treatments, tests,
26 and inoculations, whether or not the severing or penetrating of tissues
27 is involved and whether or not a degree of independent judgment and
28 skill is required;

29 (2) Delegate to other persons ((engaged in nursing,)) the functions
30 outlined in subsection (1) of this section in accordance with this
31 chapter and chapter 18.88A RCW;

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

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

35 **Sec. 51.** RCW 18.88A.030 and 1994 sp.s. c 9 s 709 are each amended
36 to read as follows:

1 (1) A nursing assistant may assist in the care of individuals as
2 delegated by and under the direction and supervision of a licensed
3 (registered) nurse or licensed practical nurse.

4 (2) A health care facility shall not assign a nursing assistant-
5 registered to provide care until the nursing assistant-registered has
6 demonstrated skills necessary to perform competently all assigned
7 duties and responsibilities.

8 (3) Nothing in this chapter shall be construed to confer on a
9 nursing assistant the authority to administer medication unless
10 delegated as a specific nursing task pursuant to chapter 18.79 RCW and
11 this chapter or to practice as a licensed (registered) nurse or
12 licensed practical nurse as defined in chapter 18.79 RCW.

13 (4) Certification is voluntary for nursing assistants working in
14 health care facilities other than nursing homes unless otherwise
15 required by state or federal law or regulation.

16 (5) The commission may adopt rules to implement the provisions of
17 this chapter.

18 NEW SECTION. **Sec. 52.** The secretary of health in consultation
19 with the Washington nursing care quality assurance commission, the
20 school of public health and community medicine and the school of
21 nursing of the University of Washington, and the department of social
22 and health services shall monitor the implementation of sections 44
23 through 51 of this act and shall make an interim report by December 31,
24 1996, and a final report by December 31, 1997, to the legislature on
25 the effectiveness of sections 44 through 51 of this act, including
26 protecting the health and safety of persons with developmental
27 disabilities and residents of adult family homes and boarding homes
28 providing assisted living services, including the appropriateness of
29 the tasks allowed for delegation, level and type of training and
30 regulation of nursing assistants, and with any recommendations for
31 improvements. The report shall be based on direct observation,
32 documentation, and interviews, and shall specifically include outcome
33 data on the following:

- 34 (1) Patient, nurse, and nursing assistant satisfaction;
- 35 (2) Medication errors, including those resulting in
36 hospitalization;
- 37 (3) Noncompliance with required training;
- 38 (4) Noncompliance with nurse delegation protocols;

- (5) Incidence of harm to patients, including abuse and neglect;
- (6) Impact on access to care;
- (7) Impact on patient independence;
- (8) Impact on patient quality of life; and
- (9) Incidence of coercion in the nurse-delegation process.

The interim report shall additionally recommend a proposed mechanism and time frame for extending nurse delegation provisions similar to those defined in this act to persons residing in their own homes.

NEW SECTION. **Sec. 53.** A new section is added to chapter 18.51 RCW to read as follows:

By December 1, 1995, the department shall take the following actions to implement the recommendations of legislative budget committee report number 95-9:

(1) The department shall petition the federal health care financing administration to eliminate the regulation allowing a resident to refuse to be transferred from distinct-part skilled nursing units to ordinary care units if their condition improves to the point that the resident no longer needs the special services of the skilled nursing unit.

(2) The department shall clarify with the federal health care financing administration and with nursing facilities the situations in which providers should undertake investigation of possible patient abuse, mistreatment, or neglect, so that minor incidents and accidents not perceived to be the result of potential abuse or neglect no longer need to be reported.

(3) The department shall work with nursing facilities to identify items on the uniform comprehensive needs assessment protocol that are not relevant for short-stay rehabilitative residents, and shall apply to the federal health care financing administration for a waiver of these requirements.

(4) The department shall work with nursing facility provider organizations to develop prototype systems to incorporate required assessment protocols into nursing facilities' day-to-day operating systems.

(5) The department shall revise its procedures to explicitly require that surveyors support citations for hazardous situations with

1 both an assessment of the seriousness of the potential injuries and the
2 likelihood of their occurrence.

3 (6) For purposes of nursing facility care only, the department
4 shall develop a standard definition of the term "physician/nurse
5 treatment protocols," in consultation with the nursing care quality
6 assurance commission and physicians' groups, and shall formally notify
7 nursing facilities of the extent to which the use of such protocols is
8 allowable under state and federal regulations.

9 **NEW SECTION.** **Sec. 54.** A special legislative task force is
10 established to monitor implementation of sections 44 through 51 of this
11 act. The task force shall consist of four members from the house of
12 representatives, no more than two of whom shall be members of the same
13 caucus, who shall be appointed by the speaker of the house of
14 representatives, and four members from the senate, no more than two of
15 whom shall be members of the same caucus, who shall be appointed by the
16 president of the senate. The task force shall:

17 (1) Review the proposed nurse delegation protocols developed by the
18 nursing care quality assurance commission in accordance with section
19 45(5) of this act;

20 (2) Review the proposed core and specialized training curricula
21 developed by the department of social and health services and by the
22 nursing care quality assurance commission in accordance with section
23 45(5), (6), and (7) of this act;

24 (3) Review the program and reimbursement policies, and the
25 identified barriers to nurse delegation, developed by the department of
26 health and the department of social and health services in accordance
27 with section 46 of this act;

28 (4) Submit an interim report of its findings and recommendations on
29 the above actions to the legislature by January 1, 1996;

30 (5) During 1996, conduct hearings to assess the effectiveness with
31 which the delegation protocols, the core training, and nurse oversight
32 are being implemented, and their impact on patient care and quality of
33 life;

34 (6) Review and approve the proposed study designs developed in
35 accordance with section 52 of this act;

36 (7) By February 1, 1997, recommend to the legislature a mechanism
37 and time frame for extending nurse delegation provisions similar to
38 those described in this act to persons residing in their own homes;

1 (8) During 1997, receive interim reports on the findings of the
2 studies conducted in accordance with section 52 of this act, and
3 conduct additional fact-finding hearings on the implementation and
4 impact of the nurse delegation provisions of this act.

5 The office of program research and senate committee services shall
6 provide staff support to the task force. The department of health, the
7 department of social and health services, and the nursing care quality
8 assurance commission shall provide technical support as needed. The
9 task force shall cease to exist on January 1, 1998, unless extended by
10 act of the legislature.

11 **Sec. 55.** RCW 18.51.091 and 1987 c 476 s 24 are each amended to
12 read as follows:

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

1 **Sec. 56.** RCW 18.51.140 and 1986 c 266 s 83 are each amended to
2 read as follows:

3 Standards for fire protection and the enforcement thereof, with
4 respect to all nursing homes to be licensed hereunder, shall be the
5 responsibility of the director of community, trade, and economic
6 development, through the director of fire protection, who shall adopt
7 such recognized standards as may be applicable to nursing homes for the
8 protection of life against the cause and spread of fire and fire
9 hazards. The department upon receipt of an application for a license,
10 shall submit to the director of community, trade, and economic
11 development, through the director of fire protection, in writing, a
12 request for an inspection, giving the applicant's name and the location
13 of the premises to be licensed. Upon receipt of such a request, the
14 director of community, trade, and economic development, through the
15 director of fire protection, or his or her deputy, shall make an
16 inspection of the nursing home to be licensed, and if it is found that
17 the premises do not comply with the required safety standards and fire
18 regulations as promulgated by the director of community, trade, and
19 economic development, through the director of fire protection, he or
20 she shall promptly make a written report to the nursing home and the
21 department as to the manner and time allowed in which the premises must
22 qualify for a license and set forth the conditions to be remedied with
23 respect to fire regulations. The department, applicant or licensee
24 shall notify the director of community, trade, and economic
25 development, through the director of fire protection, upon completion
26 of any requirements made by him or her, and the director of community,
27 trade, and economic development, through the director of fire
28 protection, or his or her deputy, shall make a reinspection of such
29 premises. Whenever the nursing home to be licensed meets with the
30 approval of the director of community, trade, and economic development,
31 through the director of fire protection, he or she shall submit to the
32 department, a written report approving same with respect to fire
33 protection before a full license can be issued. The director of
34 community, trade, and economic development, through the director of
35 fire protection, shall make or cause to be made inspections of such
36 nursing homes at least ((annually)) every eighteen months.

37 In cities which have in force a comprehensive building code, the
38 provisions of which are determined by the director of community, trade,
39 and economic development, through the director of fire protection, to

1 be equal to the minimum standards of the code for nursing homes adopted
2 by the director of community, trade, and economic development, through
3 the director of fire protection, the chief of the fire department,
4 provided the latter is a paid chief of a paid fire department, shall
5 make the inspection with the director of community, trade, and economic
6 development, through the director of fire protection, or his or her
7 deputy and they shall jointly approve the premises before a full
8 license can be issued.

9 **Sec. 57.** RCW 18.51.300 and 1981 1st ex.s. c 2 s 24 are each
10 amended to read as follows:

11 Unless specified otherwise by the department, a nursing home shall
12 retain and preserve all records which relate directly to the care and
13 treatment of a patient for a period of no less than ((ten)) eight years
14 following the most recent discharge of the patient; except the records
15 of minors, which shall be retained and preserved for a period of no
16 less than three years following attainment of the age of eighteen
17 years, or ten years following such discharge, whichever is longer.

18 If a nursing home ceases operations, it shall make immediate
19 arrangements, as approved by the department, for preservation of its
20 records.

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

25 **Sec. 58.** RCW 74.42.020 and 1982 c 120 s 1 are each amended to read
26 as follows:

27 The standards in ((RCW 74.42.030 through 74.42.570)) this chapter
28 are the minimum standards for facilities licensed under chapter 18.51
29 RCW: PROVIDED, HOWEVER, That RCW 74.42.040, 74.42.140 through
30 74.42.280, 74.42.300, 74.42.360, 74.42.370, 74.42.380, 74.42.420 (2),
31 (4), (5), (6) and (7), 74.42.430(3), 74.42.450 (2) and (3), 74.42.520,
32 74.42.530, 74.42.540, 74.42.570, and 74.42.580 shall not apply to
33 ((Christian Science sanatoria facilities operated and listed or
34 certified by The First Church of Christ, Scientist, in Boston,
35 Massachusetts)) any nursing home or institution conducted for those who
36 rely upon treatment by prayer or spiritual means in accordance with the
37 creed or tenets of any well-recognized church or religious

1 denomination, or for any nursing home or institution operated for the
2 exclusive care of members of a convent as defined in RCW 84.36.800 or
3 rectory, monastery, or other institution operated for the care of
4 members of the clergy.

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

7 The legislature finds that:

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

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

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

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

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

25 The department shall work in partnership with hospitals in
26 assisting patients and their families to find long-term care services
27 of their choice. The department shall not delay hospital discharges
28 but shall assist and support the activities of hospital discharge
29 planners. The department also shall coordinate with home health and
30 hospice agencies whenever appropriate. The role of the department is
31 to assist the hospital and to assist patients and their families in
32 making informed choices by providing information regarding home and
33 community options to individuals who are hospitalized and likely to
34 need long-term care.

35 (1) To the extent of available funds, the department shall assess
36 individuals who:

1 (a) Are medicaid clients, medicaid applicants, or eligible for both
2 medicare and medicaid; and

3 (b) Apply or are likely to apply for admission to a nursing
4 facility.

5 (2) For individuals who are reasonably expected to become medicaid
6 recipients within one hundred eighty days of admission to a nursing
7 facility, the department shall, to the extent of available funds, offer
8 an assessment and information regarding appropriate in-home and
9 community services.

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

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

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

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

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

23 (4) When the department finds, based on assessment, that the
24 individual prefers and needs nursing facility care, the department
25 shall:

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

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

30 (c) Describe the role of the department in providing nursing
31 facility case management.

32 NEW SECTION. **Sec. 61.** A new section is added to chapter 74.42 RCW
33 to read as follows:

34 A nursing facility shall not admit any individual who is medicaid
35 eligible unless that individual has been assessed by the department.

36 A medicaid-eligible individual residing in a nursing facility who is
37 transferred to an acute care hospital shall not require a department

1 assessment under this section prior to returning to the same or another
2 nursing facility.

3 If a nursing facility admits an individual who is medicaid eligible
4 without assessment by the department, the effective date of the initial
5 authorization will be the date of the request for a department
6 assessment. A facility that admits such an individual without
7 assessment by the department shall not be reimbursed by the department
8 and shall not collect payment from a medicaid eligible individual for
9 any care rendered before the date the facility makes a request to the
10 department for an assessment.

11 **NEW SECTION.** **Sec. 62.** A new section is added to chapter 74.42 RCW
12 to read as follows:

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

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

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

21 **NEW SECTION.** **Sec. 63.** A new section is added to chapter 74.42 RCW
22 to read as follows:

23 To the extent of available funding, the department shall provide
24 case management services to assist nursing facility residents, in
25 conjunction and partnership with nursing facility staff. The purpose
26 of the case management services is to assist residents and their
27 families to assess the appropriateness and availability of home and
28 community services that could meet the resident's needs so that the
29 resident and family can make informed choices.

30 To the extent of available funding, the department shall provide
31 case management services to nursing facility residents who are:

32 (1) Medicaid funded;

33 (2) Dually medicaid and medicare eligible;

34 (3) Medicaid applicants; and

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

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

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

6 (2) The legislature finds that it is necessary to impose a
7 moratorium on new medicaid nursing facility contracts and on expansion
8 of existing medicaid nursing facility contracts while the department
9 evaluates and, if appropriate, seeks any necessary federal approval to
10 purchase nursing facility care either through selective contracting or
11 through a capitated managed care program.

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

14 (1) The department shall evaluate and determine whether selective
15 contracting or capitated managed care would be effective in controlling
16 the cost of medicaid nursing facility care while maintaining adequate
17 access and quality. If the department determines that either selective
18 contracting or capitated managed care would be cost-effective, the
19 department shall submit its request for any necessary approvals for
20 whichever one is more cost-effective to the appropriate federal agency
21 by December 1, 1997.

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

26 (a) The fiscal impact of implementation;

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

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

31 **NEW SECTION.** **Sec. 66.** A new section is added to chapter 74.39A
32 RCW to read as follows:

33 The department shall impose, on the effective date of this act, a
34 moratorium on new contracts and on expansion of existing contracts for
35 medicaid nursing facility care, effective until December 31, 1998, or
36 until selective contracting or capitated managed care is implemented,
37 whichever is sooner. During the moratorium, the department shall enter

1 into new contracts or expand the number of beds served under an
2 existing contract only in the event the department determines there is
3 a severe shortage of contracted beds in an area resulting in inadequate
4 access of nursing facility care for medicaid recipients.

5 The department may adopt rules necessary to implement the
6 moratorium.

7 **Sec. 67.** RCW 74.09.120 and 1993 sp.s. c 3 s 8 are each amended to
8 read as follows:

9 The department shall purchase necessary physician and dentist
10 services by contract or "fee for service." The department shall
11 purchase nursing ((home)) facility care by contract as provided in
12 sections 64 through 66 of this act. The department shall establish
13 regulations for reasonable nursing home accounting and reimbursement
14 systems, which shall provide that no payment shall be made to a nursing
15 home ((which)) that does not permit inspection by the department of
16 social and health services of every part of its premises and an
17 examination of all records, including financial records, methods of
18 administration, general and special dietary programs, the disbursement
19 of drugs and methods of supply, and any other records the department
20 deems relevant to the establishment of such a system.

21 The department may purchase nursing home care by contract in
22 veterans' homes operated by the state department of veterans affairs.
23 The department shall establish rules for reasonable accounting and
24 reimbursement systems for such care.

25 The department may purchase care in institutions for the mentally
26 retarded, also known as intermediate care facilities for the mentally
27 retarded. The department shall establish rules for reasonable
28 accounting and reimbursement systems for such care. Institutions for
29 the mentally retarded include licensed nursing homes, public
30 institutions, licensed boarding homes with fifteen beds or less, and
31 hospital facilities certified as intermediate care facilities for the
32 mentally retarded under the federal medicaid program to provide health,
33 rehabilitative, or rehabilitative services and twenty-four hour
34 supervision for mentally retarded individuals or persons with related
35 conditions and includes in the program "active treatment" as federally
36 defined.

37 The department may purchase care in institutions for mental
38 diseases by contract. The department shall establish rules for

1 reasonable accounting and reimbursement systems for such care.
2 Institutions for mental diseases are certified under the federal
3 medicaid program and primarily engaged in providing diagnosis,
4 treatment, or care to persons with mental diseases, including medical
5 attention, nursing care, and related services.

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

8 **NEW SECTION.** **Sec. 68.** A new section is added to chapter 74.39A
9 RCW to read as follows:

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

13 (a) The applicant for or recipient of long-term care services
14 transferred the asset for the purpose of qualifying for state or
15 federal coverage for long-term care services and the person who
16 received the asset was aware, or should have been aware, of this
17 purpose;

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

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

23 (2) The civil fine imposed under this section shall be imposed in
24 a judicial proceeding initiated by the department and shall equal (a)
25 one hundred and fifty percent of the amount the department expends for
26 the care of the applicant or recipient during the period of
27 ineligibility attributable to the amount transferred to the person
28 subject to the civil fine; plus (b) the department's court costs and
29 attorney fees.

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

35 **NEW SECTION.** **Sec. 69.** A new section is added to chapter 74.39A
36 RCW to read as follows:

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

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

10 NEW SECTION. **Sec. 70.** A new section is added to chapter 74.39A
11 RCW to read as follows:

12 Notwithstanding any other provision of law:

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

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

30 **Sec. 71.** RCW 11.40.010 and 1994 c 221 s 25 are each amended to
31 read as follows:

32 Every personal representative shall, after appointment and
33 qualification, give a notice to the creditors of the deceased, stating
34 such appointment and qualification as personal representative and
35 requiring all persons having claims against the deceased to serve the
36 same on the personal representative or the estate's attorney of record,
37 and file an executed copy thereof with the clerk of the court, within

1 four months after the date of the first publication of such notice
2 described in this section or within four months after the date of the
3 filing of the copy of such notice with the clerk of the court,
4 whichever is the later, or within the time otherwise provided in RCW
5 11.40.013. The four-month time period after the later of the date of
6 the first publication of the notice to creditors or the date of the
7 filing of such notice with the clerk of the court is referred to in
8 this chapter as the "four-month time limitation." Such notice shall be
9 given as follows:

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

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

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

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

22 Except as otherwise provided in RCW 11.40.011 or 11.40.013, any
23 claim not filed within the four-month time limitation shall be forever
24 barred, if not already barred by any otherwise applicable statute of
25 limitations. This bar is effective as to claims against both the
26 decedent's probate assets and nonprobate assets as described in RCW
27 11.18.200. Proof by affidavit of the giving and publication of such
28 notice shall be filed with the court by the personal representative.

29 Acts of a notice agent in complying with chapter 221, Laws of 1994
30 may be adopted and ratified by the personal representative as if done
31 by the personal representative in complying with this chapter, except
32 that if at the time of the appointment and qualification of the
33 personal representative a notice agent had commenced nonprobate notice
34 to creditors under chapter 11.42 RCW, the personal representative shall
35 give published notice as provided in RCW 11.42.180.

36 **Sec. 72.** RCW 11.42.020 and 1994 c 221 s 32 are each amended to
37 read as follows:

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

3 (a) As of the date of the filing of a copy of the notice with the
4 clerk of the superior court for the notice county, the notice agent has
5 no knowledge of the appointment and qualification of a personal
6 representative in the decedent's estate in the state of Washington or
7 of another person becoming a notice agent; and

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

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

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

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

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

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

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

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

11 (5) A claim not filed within the four-month time limitation is
12 forever barred, if not already barred by an otherwise applicable
13 statute of limitations, except as provided in RCW 11.42.030 or
14 11.42.050. The bar is effective to bar claims against both the probate
15 estate of the decedent and nonprobate assets that were subject to
16 satisfaction of the decedent's general liabilities immediately before
17 the decedent's death. If a notice to the creditors of a decedent is
18 published by more than one notice agent and the notice agents are not
19 acting jointly, the four-month time limitation means the four-month
20 time limitation that applies to the notice agent who first publishes
21 the notice. Proof by affidavit or perjury declaration made under RCW
22 9A.72.085 of the giving and publication of the notice must be filed
23 with the clerk of the superior court for the notice county by the
24 notice agent.

25 **Sec. 73.** RCW 11.62.010 and 1993 c 291 s 1 are each amended to read
26 as follows:

27 (1) At any time after forty days from the date of a decedent's
28 death, any person who is indebted to or who has possession of any
29 personal property belonging to the decedent or to the decedent and his
30 or her surviving spouse as a community, which debt or personal property
31 is an asset which is subject to probate, shall pay such indebtedness or
32 deliver such personal property, or so much of either as is claimed, to
33 a person claiming to be a successor of the decedent upon receipt of
34 proof of death and of an affidavit made by said person which meets the
35 requirements of subsection (2) of this section.

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

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

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

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

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

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

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

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

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

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

28 (3) A transfer agent of any security shall change the registered
29 ownership of the security claimed from the decedent to the person
30 claiming to be the successor with respect to such security upon the
31 presentation of proof of death and of an affidavit made by such person
32 which meets the requirements of subsection (2) of this section. Any
33 governmental agency required to issue certificates of ownership or of
34 license registration to personal property shall issue a new certificate
35 of ownership or of license registration to a person claiming to be a
36 successor of the decedent upon receipt of proof of death and of an
37 affidavit made by such person which meets the requirements of
38 subsection (2) of this section.

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

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

7 **Sec. 74.** RCW 11.28.120 and 1994 c 221 s 23 are each amended to
8 read as follows:

9 Administration of an estate if the decedent died intestate or if
10 the personal representative or representatives named in the will
11 declined or were unable to serve shall be granted to some one or more
12 of the persons hereinafter mentioned, and they shall be respectively
13 entitled in the following order:

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

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

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

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

26 (5)(a) The director of revenue, or the director's designee, for
27 those estates having property subject to the provisions of chapter
28 11.08 RCW; however, the director may waive this right.

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

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

33 (7) If the persons so entitled shall fail for more than forty days
34 after the death of the decedent to present a petition for letters of
35 administration, or if it appears to the satisfaction of the court that
36 there is no next of kin, as above specified eligible to appointment, or
37 they waive their right, and there are no principal creditor or

1 creditors, or such creditor or creditors waive their right, then the
2 court may appoint any suitable person to administer such estate.

3 **Sec. 75.** RCW 18.39.250 and 1989 c 390 s 3 are each amended to read
4 as follows:

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

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

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

27 (4) All prearrangement funeral service trust moneys shall be
28 deposited in an insured account in a qualified public depositary or
29 shall be invested in instruments issued or insured by any agency of the
30 federal government if these securities are held in a public depositary.
31 The account shall be designated as the prearrangement funeral service
32 trust of the funeral establishment for the benefit of the beneficiaries
33 named in the prearrangement funeral service contracts. The
34 prearrangement funeral service trust shall not be considered as, nor
35 shall it be used as, an asset of the funeral establishment.

36 (5) After deduction of reasonable fees for the administration of
37 the trust, taxes paid or withheld, or other expenses of the trust, all
38 interest, dividends, increases, or accretions of whatever nature earned

1 by a trust shall be kept unimpaired and shall become a part of the
2 trust. Adequate records shall be maintained to allocate the share of
3 principal and interest to each contract. Fees deducted for the
4 administration of the trust shall not exceed one percent of the face
5 amount of the prearrangement funeral service contract per annum. In no
6 instance shall the administrative charges deducted from the
7 prearrangement funeral service trust reduce, diminish, or in any other
8 way lessen the value of the trust so that the services or merchandise
9 provided for under the contract are reduced, diminished, or in any
10 other way lessened.

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

15 (a) If the funeral establishment files a verified statement with
16 the trustees that the prearrangement funeral merchandise and services
17 covered by the contract have been furnished and delivered in accordance
18 therewith; or

19 (b) If the funeral establishment files a verified statement with
20 the trustees that the prearrangement funeral merchandise and services
21 covered by the contract have been canceled in accordance with its
22 terms.

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

27 (8) Prearrangement funeral service contracts which have or should
28 have an account in a prearrangement funeral service trust may be
29 terminated by the board if the funeral establishment goes out of
30 business, becomes insolvent or bankrupt, makes an assignment for the
31 benefit of creditors, has its prearrangement funeral service
32 certificate of registration revoked, or for any other reason is unable
33 to fulfill the obligations under the contract. In such event, or upon
34 demand by the purchaser or beneficiary of the prearrangement funeral
35 service contract, the funeral establishment shall refund to the
36 purchaser or beneficiary all moneys deposited in the trust and
37 allocated to the contract unless otherwise ordered by a court of
38 competent jurisdiction. The purchaser or beneficiary may, in lieu of
39 a refund, elect to transfer the prearrangement funeral service contract

1 and all amounts in trust to another funeral establishment licensed
2 under this chapter which will agree, by endorsement to the contract, to
3 be bound by the contract and to provide the funeral merchandise or
4 services. Election of this option shall not relieve the defaulting
5 funeral establishment of its obligation to the purchaser or beneficiary
6 for any amounts required to be, but not placed, in trust.

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

22 (10) Prearrangement funeral service trust moneys shall not be used,
23 directly or indirectly, for the benefit of the funeral establishment or
24 any director, officer, agent, or employee of the funeral establishment
25 including, but not limited to, any encumbrance, pledge, or other use of
26 prearrangement funeral service trust moneys as collateral or other
27 security.

28 (11)(a) If, at the time of the signing of the prearrangement
29 funeral service contract, the beneficiary of the trust is a recipient
30 of public assistance as defined in RCW 74.04.005, or reasonably
31 anticipates being so defined, the contract may provide that the trust
32 will be irrevocable. If after the contract is entered into, the
33 beneficiary becomes eligible or seeks to become eligible for public
34 assistance under Title 74 RCW, the contract may provide for an election
35 by the beneficiary, or by the purchaser on behalf of the beneficiary,
36 to make the trust irrevocable thereafter in order to become or remain
37 eligible for such assistance.

38 (b) The department of social and health services shall notify the
39 trustee of any prearrangement service trust that the department has a

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

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

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

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

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

15 (d) Specifies that, in the case of cancellation by a purchaser or
16 beneficiary eligible to cancel under the contract or under this
17 chapter, up to ten percent of the contract amount may be retained by
18 the seller to cover the necessary expenses of selling and setting up
19 the contract;

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

22 **Sec. 76.** RCW 18.39.255 and 1989 c 390 s 4 are each amended to read
23 as follows:

24 Prearranged funeral service contracts funded through insurance
25 shall contain language which:

26 (1) States the amount of insurance;

27 (2) Informs the purchaser of the name and address of the insurance
28 company through which the insurance will be provided, the policy
29 number, and the name of the beneficiary; ((and))

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

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

35 (5) States that for purposes of the contract, the procedures in RCW
36 18.39.250(11)(b) shall control such recoupment.

1 **Sec. 77.** RCW 68.46.050 and 1973 1st ex.s. c 68 s 5 are each
2 amended to read as follows:

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

8 ((+1)) (a) If the cemetery authority files a verified statement
9 with the depository that the prearrangement merchandise and services
10 covered by a contract have been furnished and delivered in accordance
11 therewith; or

12 ((+2)) (b) If the cemetery authority files a verified statement
13 that a specific prearrangement contract has been canceled in accordance
14 with its terms.

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

23 **Sec. 78.** RCW 70.129.040 and 1994 c 214 s 5 are each amended to
24 read as follows:

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

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

32 ((+3))(a) The facility must deposit a resident's personal funds in
33 excess of one hundred dollars in an interest-bearing account or
34 accounts that is separate from any of the facility's operating
35 accounts, and that credits all interest earned on residents' funds to
36 that account. In pooled accounts, there must be a separate accounting
37 for each resident's share.

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

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

7 (a) The system must preclude any commingling of resident funds with
8 facility funds or with the funds of any person other than another
9 resident.

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

12 ((+5))) (4) Upon the death of a resident with a personal fund
13 deposited with the facility the facility must convey within forty-five
14 days the resident's funds, and a final accounting of those funds, to
15 the individual or probate jurisdiction administering the resident's
16 estate; but in the case of a resident who received long-term care
17 services paid for by the state, the funds and accounting shall be sent
18 to the state of Washington, department of social and health services,
19 office of financial recovery. The department may establish a release
20 procedure for the costs of final disposition.

21 **Sec. 79.** RCW 43.20B.080 and 1994 c 21 s 3 are each amended to read
22 as follows:

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

26 (2) Liens may be adjusted by foreclosure in accordance with chapter
27 61.12 RCW.

28 (3) In the case of an individual who was fifty-five years ((or
29 {or})) of age or older when the individual received medical assistance,
30 the department shall seek adjustment or recovery from the individual's
31 estate, and from nonprobate assets of the individual as defined by RCW
32 11.02.005 except property passing through a community property
33 agreement, but only for medical assistance consisting of nursing
34 facility services, home and community-based services, other services
35 that the department determines to be appropriate, and related hospital
36 and prescription drug services. Recovery from the individual's estate,
37 including foreclosure of liens imposed under this section, shall be

1 undertaken as soon as practicable, consistent with the requirements of
2 42 U.S.C. Sec. 1396p.

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

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

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

14 **NEW SECTION. Sec. 80.** A new section is added to chapter 74.46 RCW
15 to read as follows:

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

25 **Sec. 81.** RCW 74.46.020 and 1993 sp.s. c 13 s 1 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) "Accrual method of accounting" means a method of accounting in
30 which revenues are reported in the period when they are earned,
31 regardless of when they are collected, and expenses are reported in the
32 period in which they are incurred, regardless of when they are paid.

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

36 (3) "Appraisal" means the process of estimating the fair market
37 value or reconstructing the historical cost of an asset acquired in a

1 past period as performed by a professionally designated real estate
2 appraiser with no pecuniary interest in the property to be appraised.
3 It includes a systematic, analytic determination and the recording and
4 analyzing of property facts, rights, investments, and values based on
5 a personal inspection and inventory of the property.

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

16 (5) "Assets" means economic resources of the contractor, recognized
17 and measured in conformity with generally accepted accounting
18 principles.

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

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

23 (8) "Beneficial owner" means:

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

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

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

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

36 (c) Any person who, subject to subparagraph (b) of this subsection,
37 has the right to acquire beneficial ownership of such ownership
38 interest within sixty days, including but not limited to any right to
39 acquire:

1 (i) Through the exercise of any option, warrant, or right;
2 (ii) Through the conversion of an ownership interest;
3 (iii) Pursuant to the power to revoke a trust, discretionary
4 account, or similar arrangement; or
5 (iv) Pursuant to the automatic termination of a trust,
6 discretionary account, or similar arrangement;
7 except that, any person who acquires an ownership interest or power
8 specified in subparagraphs (i), (ii), or (iii) of this subparagraph (c)
9 with the purpose or effect of changing or influencing the control of
10 the contractor, or in connection with or as a participant in any
11 transaction having such purpose or effect, immediately upon such
12 acquisition shall be deemed to be the beneficial owner of the ownership
13 interest which may be acquired through the exercise or conversion of
14 such ownership interest or power;

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

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

27 (ii) The pledgee agreement, prior to default, does not grant to the
28 pledgee:

29 (A) The power to vote or to direct the vote of the pledged
30 ownership interest; or

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

35 (9) "Capitalization" means the recording of an expenditure as an
36 asset.

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

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

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

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

9 (14) "Entity" means an individual, partnership, corporation, or any
10 other association of individuals capable of entering enforceable
11 contracts.

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

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

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

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

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

29 (20) "Generally accepted auditing standards" means auditing
30 standards approved by the American institute of certified public
31 accountants (AICPA).

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

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

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

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

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

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

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

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

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

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

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

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

4 (33) "Patient day" or "((client)) resident day" means a calendar
5 day of care provided to a nursing facility resident, which will include
6 the day of admission and exclude the day of discharge; except that,
7 when admission and discharge occur on the same day, one day of care
8 shall be deemed to exist. A "client day" or "recipient day" means a
9 calendar day of care provided to a medical care recipient determined
10 eligible by the department for services provided under chapter 74.09
11 RCW, subject to the same conditions regarding admission and discharge
12 applicable to a patient day or resident day of care.

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

23 (35) "Qualified therapist" means:

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

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

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

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

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

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

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

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

4 (i) A respiratory care practitioner certified under chapter 18.89
5 RCW.

6 (36) "Questioned costs" means those costs which have been
7 determined in accordance with generally accepted accounting principles
8 but which may constitute disallowed costs or departures from the
9 provisions of this chapter or rules and regulations adopted by the
10 department.

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

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

20 ((+38+)) (39) "Related organization" means an entity which is under
21 common ownership and/or control with, or has control of, or is
22 controlled by, the contractor.

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

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

30 ((+39+)) (40) "Restricted fund" means those funds the principal
31 and/or income of which is limited by agreement with or direction of the
32 donor to a specific purpose.

33 ((+40+)) (41) "Secretary" means the secretary of the department of
34 social and health services.

35 ((+41+)) (42) "Title XIX" or "Medicaid" means the 1965 amendments
36 to the social security act, P.L. 89-07, as amended.

37 ((+42+)) (43) "Physical plant capital improvement" means a
38 capitalized improvement that is limited to an improvement to the
39 building or the related physical plant.

1 **Sec. 82.** RCW 74.46.105 and 1985 c 361 s 10 are each amended to
2 read as follows:

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

14 (1) Each year the department will provide for field audit of the
15 cost report, statistical reports, and patient trust funds, as
16 established by RCW 74.46.700, of all or a sample of reporting
17 facilities selected by profiles of costs, exceptions, contract
18 terminations, upon special requests or other factors determined by the
19 department.

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

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

32 (4) Where an audit for a recent reporting or trust fund period
33 discloses material discrepancies, undocumented costs or mishandling of
34 patient trust funds, auditors may examine prior unaudited periods, for
35 indication of similar material discrepancies, undocumented costs or
36 mishandling of patient trust funds for not more than two reporting
37 periods preceding the facility reporting period selected in the sample.

38 (5) The audit will result in a schedule summarizing appropriate
39 adjustments to the contractor's cost report. These adjustments will

1 include an explanation for the adjustment, the general ledger account
2 or account group, and the dollar amount. Patient trust fund audits
3 shall be reported separately and in accordance with RCW 74.46.700.

4 (6) Audits shall meet generally accepted auditing standards as
5 promulgated by the American institute of certified public accountants
6 and the standards for audit of governmental organizations, programs,
7 activities and functions as published by the comptroller general of the
8 United States. Audits shall be supervised or reviewed by a certified
9 public accountant.

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

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

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

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

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

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

28 **Sec. 83.** RCW 74.46.115 and 1983 1st ex.s. c 67 s 6 are each
29 amended to read as follows:

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

35 **Sec. 84.** RCW 74.46.160 and 1985 c 361 s 12 are each amended to
36 read as follows:

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

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

18 **Sec. 85.** RCW 74.46.170 and 1983 1st ex.s. c 67 s 10 are each
19 amended to read as follows:

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

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

35 (3) A settlement will be reopened if necessary to make adjustments
36 for findings resulting from an audit performed pursuant to RCW
37 74.46.105(4).

1 **Sec. 86.** RCW 74.46.180 and 1993 sp.s. c 13 s 2 are each amended to
2 read as follows:

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

20 (2) A contractor found, under a preliminary or final settlement
21 issued by the department, to have received either overpayments or
22 erroneous payments ((under a preliminary or final settlement)), to
23 which the contractor is not entitled as determined by the department
24 under the provisions of this chapter, shall refund such erroneous
25 payments or overpayments to the ((state)) department within ((thirty))
26 sixty days after the date the preliminary or final settlement report is
27 submitted to the contractor, subject to the provisions of subsections
28 (3), (4), and ((+7)) (6) of this section, PROVIDED, That for all
29 preliminary or final settlements issued on and after July 1, 1995,
30 regardless of what period a settlement covers, neither a timely filed
31 request to pursue the department's administrative appeals or exception
32 procedure nor commencement of judicial review, as may be available to
33 the contractor in law, contesting the settlement, erroneous payments or
34 overpayments shall delay recovery. A contractor shall pay interest at
35 the rate of one percent per month on any unpaid preliminary or final
36 settlement balance still due the department sixty days after the
37 preliminary or final settlement report is submitted to the contractor,
38 accruing from this date: PROVIDED Further, That the department shall
39 refund interest collected for preliminary and settlement amounts the

1 contractor was entitled to retain as subsequently determined by final
2 administrative or judicial decision.

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

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

29 (5) All return on investment rate payments provided by RCW
30 74.46.530 shall be retained by the contractor to the extent net
31 invested funds are substantiated by department field audit. Any
32 industrial insurance dividend or premium discount under RCW 51.16.035
33 shall be retained by the contractor to the extent that such dividend or
34 premium discount is attributable to the contractor's private patients.

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

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

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

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

25 **Sec. 87.** RCW 74.46.370 and 1980 c 177 s 37 are each amended to
26 read as follows:

27 (1) Except for new buildings, the contractor shall use lives which
28 reflect the estimated actual useful life of the asset and which shall
29 be no shorter than guideline lives as established by the department.
30 The shortest life which may be used for new buildings is thirty years.
31 Lives shall be measured from the date on which the assets were first
32 used in the medical care program or from the date of the most recent
33 arm's-length acquisition of the asset, whichever is more recent. In
34 cases where RCW 74.46.360(4)(a) does apply, the shortest life that may
35 be used for buildings is the remaining useful life under the prior
36 contract. In all cases, lives shall be extended to reflect periods, if
37 any, when assets were not used in or as a facility.

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

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

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

25 **Sec. 88.** RCW 74.46.420 and 1993 sp.s. c 13 s 7 are each amended to
26 read as follows:

27 The following principles are inherent in RCW 74.46.430 through
28 74.46.590:

29 (1) ((Reimbursement)) Effective July 1, 1995, nursing facility
30 payment rates will be set prospectively on a per ((patient)) resident
31 day basis ((on)) utilizing a ((two year)) four-year rate cycle system
32 corresponding to ((each)) the four fiscal years within two consecutive
33 state ((biennium; and)) biennia, however, the two state biennia
34 extending from July 1, 1993, to June 30, 1997, shall be utilized as the
35 chronological framework for the initial four-year rate cycle, as if the
36 cycle had commenced July 1, 1993. Because the four-year system will
37 commence July 1, 1995, at the mid-point of the initial cycle, rates
38 commencing July 1, 1995, shall represent third fiscal year rates, and

1 rates commencing July 1, 1996, shall represent fourth fiscal year
2 rates.

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

16 (3) ((The July 1 rates for the first year of each biennium shall be
17 adjusted by the change in the implicit price deflator for personal
18 consumption expenditures index published by the bureau of labor
19 statistics of the United States department of labor.

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

28 (4) ((The July 1)) Cost-rebased rates ((for the second year of each
29 biennium)) commencing July 1 of the first fiscal year of each four-year
30 rate cycle, beginning July 1, 1997, shall be adjusted downward or
31 upward in the nursing services, food, administrative, and operational
32 cost centers by ((the)) a twenty-four-month change in the nursing home
33 input price index without capital costs published by the health care
34 financing administration of the department of health and human
35 services, the HCFA index((, however, any increase shall be multiplied
36 by one and one half)). The period to be used to measure the HCFA index
37 increase or decrease to be ((multiplied by one and one half and))
38 applied ((or decrease to be applied)) to these ((second year biennial))
39 first fiscal year rate((s)) components shall ((also)) be the ((calendar

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

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

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

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

32 (c) For fourth fiscal year rates, the HCFA index period shall be
33 the twelve months ending eighteen months before the July 1 start of the
34 fourth fiscal year. In the event the change in the HCFA index measured
35 over the following twelve months, ending six months before the July 1
36 start of the fourth fiscal year, is twenty-five percent greater or less
37 than the change in the HCFA index measured over the twelve months
38 ending eighteen months before the fourth fiscal year, the department

1 shall use the HCFA index increase or decrease in such following twelve-
2 month period.

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

- 9 (a) July 1, 1995 -- December 31, 1993, to December 31, 1994;
- 10 (b) July 1, 1996 -- December 31, 1993, to December 31, 1994;
- 11 (c) July 1, 1998 -- December 31, 1995, to December 31, 1996;
- 12 (d) July 1, 1999 -- December 31, 1997, to December 31, 1998;
- 13 (e) July 1, 2000 -- December 31, 1997, to December 31, 1998; and
- 14 (f) July 1, 2002 -- December 31, 1999, to December 31, 2000.

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

25 **Sec. 89.** RCW 74.46.430 and 1993 sp.s. c 13 s 8 are each amended to
26 read as follows:

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

32 (2) ((As required,)) The department may modify such maximum per
33 ((patient)) resident day rates pursuant to the administrative ((review
34 provisions of)) appeals or exception procedure authorized by RCW
35 74.46.780.

36 (3) The maximum prospective reimbursement rates for the
37 administrative, operational, and property cost centers, and the return

1 on investment rate shall be established based upon a minimum facility
2 occupancy level of eighty-five percent.

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

7 **Sec. 90.** RCW 74.46.450 and 1993 sp.s. c 13 s 9 are each amended to
8 read as follows:

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

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

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

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

32 **Sec. 91.** RCW 74.46.460 and 1993 sp.s. c 13 s 10 are each amended
33 to read as follows:

34 (1) Each contractor's ((reimbursement)) component payment rates
35 ((will)) shall be determined or adjusted for economic trends and
36 conditions prospectively at least once during each calendar year, as
37 provided in this chapter, to be effective July ((1st)) 1. Provided,

1 that, except for the rates of new contractors as defined by the
2 department, a contractor's cost-rebased rate for the first fiscal year
3 of each ((biennium)) four-year rate cycle must be established upon its
4 own ((prior calendar period)) cost report of at least six months of
5 adjusted or audited, or both, cost data from the calendar year ending
6 eighteen months prior to the July 1 commencement of the first fiscal
7 year rebased rate.

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

22 **Sec. 92.** RCW 74.46.470 and 1993 sp.s. c 13 s 11 are each amended
23 to read as follows:

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

- 28 (a) Nursing services;
29 (b) Food;
30 (c) Administrative;
31 (d) Operational; and
32 (e) Property.

33 (2) There shall be for the time period January 1988 through June
34 1990 only an enhancement cost center established to reimburse
35 contractors for specific legislatively authorized enhancements for
36 nonadministrative wages and benefits to ensure that such enhancements
37 are used exclusively for the legislatively authorized purposes. For
38 purposes of settlement, funds appropriated to this cost center shall

1 only be used for expenditures for which the legislative authorization
2 is granted. Such funds may be used only in the following
3 circumstances:

4 (a) The contractor has increased expenditures for which legislative
5 authorization is granted to at least the highest level paid in any of
6 the last three cost years, plus, beginning July 1, 1987, any percentage
7 inflation adjustment as was granted each year under RCW 74.46.495; and
8 (b) All funds shifted from the enhancement cost center are shown to
9 have been expended for legislatively authorized enhancements.

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

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

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

23 **Sec. 93.** RCW 74.46.481 and 1993 sp.s. c 13 s 12 are each amended
24 to read as follows:

25 (1) The nursing services cost center shall include for reporting
26 and audit purposes all costs related to the direct provision of nursing
27 and related care, including fringe benefits and payroll taxes for the
28 nursing and related care personnel, and the cost of nursing supplies.
29 The department shall adopt by administrative rule a definition of
30 "related care". For rates effective after June 30, 1991, nursing
31 services costs, as reimbursed within this chapter, shall not include
32 costs of any purchased nursing care services, including registered
33 nurse, licensed practical nurse, and nurse assistant services, obtained
34 through service contract arrangement in excess of the amount of
35 compensation paid for such hours of nursing care service had they been
36 paid at the average hourly wage, including related taxes and benefits,
37 for in-house nursing care staff of like classification at the same
38 nursing facility, as reported in the most recent cost report period.

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

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

15 (a) The correlation between alternative measures and facility
16 nursing staff; and

17 (b) The cost of collecting information for and computation of a
18 measure.

19 If regression is used, the limit shall be set at predicted nursing
20 staff plus 1.75 regression standard errors. If another statistical
21 method is utilized, the limit shall be set at a level corresponding to
22 1.75 standard errors above predicted staffing computed according to a
23 regression procedure. A regression calculated shall be effective for
24 the entire biennium.

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

32 (5) Every ((two)) four years, beginning with July 1, 1997, rates,
33 when rates are set at the beginning of each new ((biennium)) four-year
34 rate cycle, the department shall divide into two peer groups nursing
35 facilities located in the state of Washington providing services to
36 medicaid residents: (a) Those facilities located within a metropolitan
37 statistical area as defined and determined by the United States office
38 of management and budget or other applicable federal office and (b)
39 those not located in such an area. The facilities in each peer group

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

26 (6) ((If a nursing facility is impacted by the limit authorized in
27 subsection (5) of this section, it shall not receive a prospective rate
28 in nursing services for July 1, 1993, less than the same facility's
29 prospective rate in nursing services as of June 30, 1993, adjusted by
30 any increase in the implicit price deflator for personal consumption
31 expenditures, IPD index, as measured over the period authorized by RCW
32 74.46.420(3).
33 (7))) Beginning with July 1, 1995, rates, the third fiscal year
34 rate of the initial four-year rate cycle, a nursing facility's
35 nonrebased component rate in nursing services for the second, third,
36 and fourth years of each ((biennium)) four-year rate cycle shall be
37 that facility's nursing services component rate ((as of July 1 of the
38 first year of that biennium)) existing on June 30 immediately before
39 the July 1 commencement of each nonrebased fiscal year rate period,

1 reduced or inflated as authorized by RCW 74.46.420. The
2 ((alternating)) rebased and nonrebased rate-setting procedures
3 ((prescribed)) described in this section and chapter for a facility's
4 ((two)) four July 1 nursing services rates occurring within each
5 ((biennium)) four-year rate period shall be followed in the same order
6 for each succeeding ((biennium)) four-year period.

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

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

36 (10))) (8) The department shall establish a method for identifying
37 patients with exceptional care requirements and a method for
38 establishing or negotiating on a consistent basis rates for such
39 patients.

1 ((11))) (9) The department, in consultation with interested
2 parties, shall adopt rules to establish the criteria the department
3 will use in reviewing any requests by a contractor for a prospective
4 rate adjustment to be used to increase the number of nursing staff.
5 These rules shall also specify the time period for submission and
6 review of staffing requests: PROVIDED, That a decision on a staffing
7 request shall not take longer than sixty days from the date the
8 department receives such a complete request. In establishing the
9 criteria, the department may consider, but is not limited to, the
10 following:

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

14 (b) Staffing patterns for similar facilities in the same peer
15 group;

16 (c) Physical plant of contractor; and

17 (d) Survey, inspection of care, and department consultation
18 results.

19 **Sec. 94.** RCW 74.46.490 and 1993 sp.s. c 13 s 13 are each amended
20 to read as follows:

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

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

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

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

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

1 **Sec. 95.** RCW 74.46.500 and 1993 sp.s. c 13 s 14 are each amended
2 to read as follows:

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

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

38 (3) Beginning with July 1, 1995, rates, the third fiscal year rate
39 of the initial four-year rate cycle, a nursing facility's nonrebased

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

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

27 **Sec. 96.** RCW 74.46.505 and 1993 sp.s. c 13 s 15 are each amended
28 to read as follows:

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

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

medicaid residents: (a) Those facilities located within a metropolitan statistical area as defined and determined by the United States office of management and budget or other applicable federal office and (b) those not located in such an area. The facilities in each peer group shall then be arrayed from lowest to highest by magnitude of per ((patient)) resident day adjusted or audited, or both, operational cost from the ((prior)) calendar report year ending eighteen months before the July 1 commencement of the first fiscal year cost-rebased rates, regardless of whether any such adjustments are contested by the nursing facility, and the median or fiftieth percentile cost for each peer group shall be determined. Operational component rates for facilities within each peer group for the first fiscal year of ((the biennium)) each four-year rate cycle shall be set at the lower of the facility's adjusted or audited, or both, per ((patient)) resident day operational cost from the ((prior)) report period for the calendar year ending eighteen months before the July 1 commencement of the first fiscal year rates or the median cost for the facility's peer group plus twenty-five percent utilizing the same calendar year report data. For July 1, 1997, cost-rebased rates then, the adjusted or audited, or both, cost report data utilized shall be from calendar year 1995 and for July 1, 2001, cost-rebased rates the adjusted or audited, or both, cost report data utilized shall be from calendar year 1999. This rate shall be reduced or inflated as authorized by RCW 74.46.420.

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

(4) Median cost((s)) limits for peer groups shall be calculated ((initially)) only once as provided in this chapter on the basis of the most recent adjusted cost information available to the department from

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

14 **Sec. 97.** RCW 74.46.510 and 1993 sp.s. c 13 s 16 are each amended
15 to read as follows:

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

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

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

34 **Sec. 98.** RCW 74.46.530 and 1993 sp.s. c 13 s 17 are each amended
35 to read as follows:

36 (1) The department shall establish for each medicaid nursing
37 facility a return on investment (ROI) rate composed of two parts: A

1 financing allowance and a variable return allowance. The financing
2 allowance part of a facility's return on investment component rate
3 shall be rebased annually, effective July 1, in accordance with this
4 section and chapter, regardless of whether the rate is for the first,
5 second, third, or ((second)) fourth fiscal year of the ((biennium))
6 four-year rate cycle.

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

15 (b) In computing the portion of net invested funds representing the
16 net book value of tangible fixed assets, the same assets, depreciation
17 bases, lives, and methods referred to in RCW 74.46.330, 74.46.350,
18 74.46.360, 74.46.370, and 74.46.380, including owned and leased assets,
19 shall be utilized, except that the capitalized cost of land upon which
20 the facility is located and such other contiguous land which is
21 reasonable and necessary for use in the regular course of providing
22 patient care shall also be included. Subject to provisions and
23 limitations contained in this chapter, for land purchased by owners or
24 lessors before July 18, 1984, capitalized cost of land shall be the
25 buyer's capitalized cost. For all partial or whole rate periods after
26 July 17, 1984, if the land is purchased after July 17, 1984,
27 capitalized cost shall be that of the owner of record on July 17, 1984,
28 or buyer's capitalized cost, whichever is lower. In the case of leased
29 facilities where the net invested funds are unknown or the contractor
30 is unable to provide necessary information to determine net invested
31 funds, the secretary shall have the authority to determine an amount
32 for net invested funds based on an appraisal conducted according to RCW
33 74.46.360(1).

34 (c) In determining the variable return allowance:

35 (i) Every ((two)) four years at the start of each new ((biennium))
36 four-year rate cycle, beginning with rates for July 1, 1997, the
37 department, without utilizing peer groups, ((will)) shall first rank
38 all facilities in numerical order from highest to lowest according to
39 their per ((patient)) resident day adjusted or audited, or both,

1 allowable costs for nursing services, food, administrative, and
2 operational costs combined as reported by the facility for the
3 ((previous)) calendar year cost report period ending eighteen months
4 before the July 1 commencement of the first fiscal year in the four-
5 year rate cycle. Therefore, for rates extending from July 1, 1997,
6 through June 30, 2001, the cost data utilized in calculating the
7 variable returns shall be from calendar year 1995 and for rates
8 extending from July 1, 2001, to June 30, 2005, the cost data utilized
9 shall be from calendar year 1999.

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

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

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

35 (i) The financing allowance shall be recomputed substituting the
36 fair market value of the assets as of January 1, 1982, as determined by
37 the department of general administration through an appraisal
38 procedure, less accumulated depreciation on the lessor's assets since
39 January 1, 1982, for the net book value of the assets in determining

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

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

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

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

26 (2) Each biennium, beginning in 1985, the secretary shall review
27 the adequacy of return on investment rates in relation to anticipated
28 requirements for maintaining, reducing, or expanding nursing care
29 capacity. The secretary shall report the results of such review to the
30 legislature and make recommendations for adjustments in the return on
31 investment rates utilized in this section, if appropriate.

32 **Sec. 99.** RCW 74.46.560 and 1983 1st ex.s. c 67 s 30 are each
33 amended to read as follows:

34 The department will notify each contractor in writing of its
35 prospective ((reimbursement)) payment rates by the effective dates of
36 the rates. Unless otherwise specified at the time it is issued,
37 ((the)) a rate will be effective from the first day of the month in
38 which it is issued until a new rate becomes effective. If a rate is

1 changed as the result of an appeals or exception procedure established
2 in accordance with RCW 74.46.780, it will be effective as of the date
3 the appealed rate became effective.

4 **Sec. 100.** RCW 74.46.570 and 1983 1st ex.s. c 67 s 31 are each
5 amended to read as follows:

6 (1) Prospective rates are subject to adjustment by the department
7 as a result of errors or omissions by the department or by the
8 contractor. The department will notify the contractor in writing of
9 each adjustment and of the effective date of the adjustment, and of any
10 amount due to the department or to the contractor as a result of the
11 rate adjustment.

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

25 (3) The contractor shall pay an amount owed the department
26 resulting from an error or omission as determined by the department on
or after July 1, 1995, or commence repayment in accordance with a
28 schedule determined and agreed to in writing by the department, within
29 sixty days after receipt of notification of the rate adjustment((
30 unless the contractor contests the department's determination in
31 accordance with the procedures set forth in RCW 74.46.780. If the
32 determination is contested, the contractor shall pay or commence
33 repayment within sixty days after completion of these proceedings)).
34 If a refund as determined by the department is not paid when due, the
35 amount thereof may be deducted from current payments by the department.
36 However, neither a timely filed request to pursue the department's
37 administrative appeals or exception procedure nor commencement of

1 judicial review, as may be available to the contractor in law, shall
2 delay recovery.

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

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

12 **Sec. 101.** RCW 74.46.640 and 1983 1st ex.s. c 67 s 34 are each
13 amended to read as follows:

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

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

20 (b) State auditors, department auditors, or authorized personnel in
21 the course of their duties are refused access to a nursing ((home))
22 facility or are not provided with existing appropriate records.
23 Payments will be released as soon as such access or records are
24 provided;

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

30 (d) Payment for the final ((thirty)) sixty days of service under a
31 contract will be held in the absence of adequate alternate security
32 acceptable to the department pending final settlement when the contract
33 is terminated; and

34 (e) Payment for services at any time during the contract period in
35 the absence of adequate alternate security acceptable to the
36 department, if a contractor's net medicaid overpayment liability for
37 one or more nursing facilities or other debt to the department, as
38 determined by preliminary settlement, final settlement, civil fines

1 imposed by the department, third-party liabilities or other source,
2 reaches or exceeds fifty thousand dollars, whether subject to good
3 faith dispute or not, and for each subsequent increase in liability
4 reaching or exceeding twenty-five thousand dollars. Payments will be
5 released as soon as practicable after acceptable security is provided
6 or refund to the department is made.

7 (2) No payment will be withheld until written notification of the
8 suspension is provided to the contractor, stating the reason
9 ((therefor)) for the withholding, except that neither a request to
10 pursue the administrative appeals or exception procedure established by
11 the department in rule nor commencement of judicial review, as may be
12 available to the contractor in law, shall delay suspension of payment.

13 **Sec. 102.** RCW 74.46.690 and 1985 c 361 s 3 are each amended to
14 read as follows:

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

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

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

36 (a) Withheld payments due the contractor; or

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

1 (c) An assignment of funds to the department; or
2 (d) Collateral acceptable to the department; or
3 (e) A purchaser's assumption of liability for the prior
4 contractor's overpayment; ((or))

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

6 (g) Any combination of (a), (b), (c), (d), ((or)) (e), or (f) of
7 this subsection.

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

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

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

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

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

28 (e) Provide that an amount equal to any recovery the department
29 determines is due from the contractor ((at)) from settlement or from
30 any other source of debt to the department, but not exceeding the
31 amount of the bond and assignment, shall be paid to the department if
32 the contractor does not pay the refund and debt within sixty days
33 following receipt of written demand ((or the conclusion of
34 administrative or judicial proceedings to contest settlement issues))
35 for payment from the department to the contractor.

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

1 (6) If the total of withheld payments, bonds, and assignments is
2 less than the total of determined and estimated overpayments, the
3 unsecured amount of such overpayments shall be a debt due the state and
4 shall become a lien against the real and personal property of the
5 contractor from the time of filing by the department with the county
6 auditor of the county where the contractor resides or owns property,
7 and the lien claim has preference over the claims of all unsecured
8 creditors.

9 (7) The contractor shall file a properly completed final cost
10 report in accordance with the requirements of this chapter, which shall
11 be audited by the department. A final settlement shall be determined
12 within ninety days following completion of the audit process, including
13 completion of any administrative appeals or exception procedure review
14 of the audit requested by the contractor, but not including completion
15 of any judicial review available to and commenced by the contractor.

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

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

29 (10) ((If a contract is terminated solely in order for the same
30 owner to contract with the department to deliver services to another
31 classification of medical care recipients at the same facility, the
32 contractor is not required to submit final cost reports, and security
33 shall not be required)) Regardless of whether a contractor intends to
34 terminate its medicaid contracts, if a contractor's net medicaid
35 overpayments and erroneous payments for one or more settlement periods,
36 and for one or more nursing facilities, combined with debts due the
37 department, reaches or exceeds a total of fifty thousand dollars, as
38 determined by preliminary settlement, final settlement, civil fines
39 imposed by the department, third-party liabilities or by any other

1 source, whether such amounts are subject to good faith dispute or not,
2 the department shall demand and obtain security equivalent to the total
3 of such overpayments, erroneous payments, and debts and shall obtain
4 security for each subsequent increase in liability reaching or
5 exceeding twenty-five thousand dollars. Such security shall meet the
6 criteria in subsections (3) and (4) of this section, except that the
7 department shall not accept an assumption of liability. The department
8 shall withhold all or portions of a contractor's current contract
9 payments or impose liens, or both, if security acceptable to the
10 department is not forthcoming. The department shall release a
11 contractor's withheld payments or lift liens, or both, if the
12 contractor subsequently provides security acceptable to the department.
13 This subsection shall apply to all overpayments and erroneous payments
14 determined by preliminary or final settlements issued on or after July
15 1, 1995, regardless of what payment periods the settlements may cover
16 and shall apply to all debts owed the department from any source,
17 including interest debts, which become due on or after July 1, 1995.

18 **Sec. 103.** RCW 74.46.770 and 1983 1st ex.s. c 67 s 39 are each
19 amended to read as follows:

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

30 (2) ((The administrative review and fair hearing process in RCW
31 74.46.780 need not be exhausted if a contractor wishes to challenge the
32 legal validity of a statute, rule, or contract provision.)) If a
33 contractor wishes to challenge the legal validity of a statute, rule,
34 or contract provision or wishes to bring a challenge based in whole or
35 in part on federal law, including but not limited to issues of
36 procedural or substantive compliance with the federal medicaid minimum
37 payment standard for long-term care facility services, the appeals or
38 exception procedure established by the department in rule may not be

1 used for these purposes. This prohibition shall apply regardless of
2 whether the contractor wishes to obtain a decision or ruling on an
3 issue of validity or federal compliance or wishes only to make a record
4 for the purpose of subsequent judicial review.

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

10 **Sec. 104.** RCW 74.46.780 and 1989 c 175 s 159 are each amended to
11 read as follows:

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

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

27 (3) The contractor and appropriate representatives of the
28 department shall attend the conference. In addition, representatives
29 selected by the contractor may attend and participate. The contractor
30 shall provide to the department in advance of the conference any
31 documentation on which it intends to rely to support its contentions.
32 The parties shall clarify and attempt to resolve the issues at the
33 conference. If additional documentation is needed to resolve the
34 issues, a second session of the conference shall be scheduled for not
35 later than twenty-eight days after the initial session unless both
36 parties agree in writing to a specific later date.

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

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

15 **Sec. 105.** RCW 74.46.010 and 1980 c 177 s 1 are each amended to
16 read as follows:

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

20 NEW SECTION. **Sec. 106.** On or before December 31, 1995, the
21 department of social and health services shall complete an analysis and
22 evaluation of the findings and recommendations contained in the 1994
23 legislative budget committee final report on "Nursing Home and Long-
24 Term Care - Part 1: Nursing Home Reimbursement." The department shall
25 report its recommendations for change, if any, to the house of
26 representatives health care and appropriations committees and the
27 senate health and human services and ways and means committees by such
28 date.

29 NEW SECTION. **Sec. 107.** If any part of this act is found to be in
30 conflict with federal requirements that are a prescribed condition to
31 the allocation of federal funds to the state, the conflicting part of
32 this act is inoperative solely to the extent of the conflict and with
33 respect to the agencies directly affected, and this finding does not
34 affect the operation of the remainder of this act in its application to
35 the agencies concerned. The rules under this act shall meet federal

1 requirements that are a necessary condition to the receipt of federal
2 funds by the state.

3 **NEW SECTION.** **Sec. 108.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

7 **NEW SECTION.** **Sec. 109.** This act is necessary for the immediate
8 preservation of the public peace, health, or safety, or support of the
9 state government and its existing public institutions, and shall take
10 effect July 1, 1995.

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