
SENATE BILL 6505

State of Washington 52nd Legislature 1992 Regular Session

By Senators Bailey and Niemi

Read first time 02/13/92. Referred to Committee on Ways & Means.

1 AN ACT Relating to medicaid funding of nursing homes; amending RCW
2 74.46.020, 74.46.380, 74.46.660, 74.46.481, 74.46.530, 74.46.495, and
3 74.46.360; adding a new section to chapter 82.04 RCW; making
4 appropriations; providing an effective date; providing an expiration
5 date; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 82.04 RCW
8 to read as follows:

9 (1) As used in this section:

10 (a) "Nursing home" means a facility licensed to provide inpatient
11 care under chapter 18.51 RCW.

12 (b) "Patient day" means a day of care as defined in RCW 74.46.020.

13 (2) In addition to any other tax, a tax is imposed on every nursing
14 home for the act or privilege of engaging in business within this

1 state. The tax is equal to three dollars per patient day of care
2 provided.

3 NEW SECTION. **Sec. 2.** (1) The sum of nine million six hundred
4 fifty-eight thousand dollars from the general fund--state and the sum
5 of eleven million eight hundred four thousand dollars from the general
6 fund--federal, or as much thereof as may be necessary, are appropriated
7 for the biennium ending June 30, 1993, to the long term care program of
8 the department of social and health services for prospective rate
9 increases to fund on a current basis the medicaid share of the tax
10 under section 1 of this act.

11 (2) The sum of eight million seven hundred thousand dollars from
12 the general fund--state and the sum of ten million six hundred fifty-
13 six thousand dollars from the general fund--federal, or as much thereof
14 as may be necessary, are appropriated for the biennium ending June 30,
15 1993, to the long term care program of the department of social and
16 health services for prospective rate increases for removing the growth
17 lid from the nursing services cost center, setting the financing
18 allowance at eleven percent, eliminating the current depreciation
19 recapture requirement, and setting the nursing home prospective
20 inflation rate by use of the federal health care financing
21 administration's eighteen-month nursing home market basket index. For
22 fiscal year 1993, the health care financing administration market
23 basket may be reduced to the extent that fully funding the inflation
24 rate would cost more than six million dollars from the general
25 fund--state of the funds appropriated in this section.

26 **Sec. 3.** RCW 74.46.020 and 1991 sp.s. c 8 s 11 are each amended to
27 read as follows:

1 Unless the context clearly requires otherwise, the definitions in
2 this section apply throughout this chapter.

3 (1) "Accrual method of accounting" means a method of accounting in
4 which revenues are reported in the period when they are earned,
5 regardless of when they are collected, and expenses are reported in the
6 period in which they are incurred, regardless of when they are paid.

7 (2) "Ancillary care" means those services required by the
8 individual, comprehensive plan of care provided by qualified
9 therapists.

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

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

27 (5) "Assets" means economic resources of the contractor, recognized
28 and measured in conformity with generally accepted accounting
29 principles.

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

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

5 (8) "Beneficial owner" means:

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

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

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

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

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

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

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

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

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

28 except that, any person who acquires an ownership interest or power
29 specified in subparagraphs (i), (ii), or (iii) of this subparagraph (c)
30 with the purpose or effect of changing or influencing the control of

1 the contractor, or in connection with or as a participant in any
2 transaction having such purpose or effect, immediately upon such
3 acquisition shall be deemed to be the beneficial owner of the ownership
4 interest which may be acquired through the exercise or conversion of
5 such ownership interest or power;

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

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

18 (ii) The pledgee agreement, prior to default, does not grant to the
19 pledgee:

20 (A) The power to vote or to direct the vote of the pledged
21 ownership interest; or

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

26 (9) "Capitalization" means the recording of an expenditure as an
27 asset.

28 (10) "Contractor" means an entity which contracts with the
29 department to provide services to medical care recipients in a facility
30 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) (~~"Gain on sale" means the difference between the total net~~
28 ~~book value of nursing home assets, including but not limited to land,~~
29 ~~building and equipment, and the total sales price of all such assets.~~

1 ~~(20))~~ "Generally accepted accounting principles" means accounting
2 principles approved by the financial accounting standards board (FASB).

3 ~~((21))~~ (20) "Generally accepted auditing standards" means
4 auditing standards approved by the American institute of certified
5 public accountants (AICPA).

6 ~~((22))~~ (21) "Goodwill" means the excess of the price paid for a
7 business over the fair market value of all other identifiable,
8 tangible, and intangible assets acquired.

9 ~~((23))~~ (22) "Historical cost" means the actual cost incurred in
10 acquiring and preparing an asset for use, including feasibility
11 studies, architect's fees, and engineering studies.

12 ~~((24))~~ (23) "Imprest fund" means a fund which is regularly
13 replenished in exactly the amount expended from it.

14 ~~((25))~~ (24) "Joint facility costs" means any costs which
15 represent resources which benefit more than one facility, or one
16 facility and any other entity.

17 ~~((26))~~ (25) "Lease agreement" means a contract between two
18 parties for the possession and use of real or personal property or
19 assets for a specified period of time in exchange for specified
20 periodic payments. Elimination (due to any cause other than death or
21 divorce) or addition of any party to the contract, expiration, or
22 modification of any lease term in effect on January 1, 1980, or
23 termination of the lease by either party by any means shall constitute
24 a termination of the lease agreement. An extension or renewal of a
25 lease agreement, whether or not pursuant to a renewal provision in the
26 lease agreement, shall be considered a new lease agreement. A strictly
27 formal change in the lease agreement which modifies the method,
28 frequency, or manner in which the lease payments are made, but does not
29 increase the total lease payment obligation of the lessee, shall not be
30 considered modification of a lease term.

1 (~~(27)~~) (26) "Medical care program" means medical assistance
2 provided under RCW 74.09.500 or authorized state medical care services.

3 (~~(28)~~) (27) "Medical care recipient" or "recipient" means an
4 individual determined eligible by the department for the services
5 provided in chapter 74.09 RCW.

6 (~~(29)~~) (28) "Net book value" means the historical cost of an
7 asset less accumulated depreciation.

8 (~~(30)~~) (29) "Net invested funds" means the net book value of
9 tangible fixed assets employed by a contractor to provide services
10 under the medical care program, including land, buildings, and
11 equipment as recognized and measured in conformity with generally
12 accepted accounting principles, plus an allowance for working capital
13 which shall be five percent of the allowable costs of each contractor
14 for the previous calendar year.

15 (~~(31)~~) (30) "Operating lease" means a lease under which rental or
16 lease expenses are included in current expenses in accordance with
17 generally accepted accounting principles.

18 (~~(32)~~) (31) "Owner" means a sole proprietor, general or limited
19 partners, and beneficial interest holders of five percent or more of a
20 corporation's outstanding stock.

21 (~~(33)~~) (32) "Ownership interest" means all interests beneficially
22 owned by a person, calculated in the aggregate, regardless of the form
23 which such beneficial ownership takes.

24 (~~(34)~~) (33) "Patient day" or "client day" means a calendar day of
25 care which will include the day of admission and exclude the day of
26 discharge; except that, when admission and discharge occur on the same
27 day, one day of care shall be deemed to exist.

28 (~~(35)~~) (34) "Professionally designated real estate appraiser"
29 means an individual who is regularly engaged in the business of
30 providing real estate valuation services for a fee, and who is deemed

1 qualified by a nationally recognized real estate appraisal educational
2 organization on the basis of extensive practical appraisal experience,
3 including the writing of real estate valuation reports as well as the
4 passing of written examinations on valuation practice and theory, and
5 who by virtue of membership in such organization is required to
6 subscribe and adhere to certain standards of professional practice as
7 such organization prescribes.

8 ((+36+)) (35) "Qualified therapist" means:

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

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

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

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

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

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

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

24 (h) An occupational therapist who is a graduate of a program in
25 occupational therapy, or who has the equivalent of such education or
26 training.

27 ((+37+)) (36) "Questioned costs" means those costs which have been
28 determined in accordance with generally accepted accounting principles
29 but which may constitute disallowed costs or departures from the

1 provisions of this chapter or rules and regulations adopted by the
2 department.

3 ~~((38))~~ (37) "Records" means those data supporting all financial
4 statements and cost reports including, but not limited to, all general
5 and subsidiary ledgers, books of original entry, and transaction
6 documentation, however such data are maintained.

7 ~~((39))~~ (38) "Related organization" means an entity which is under
8 common ownership and/or control with, or has control of, or is
9 controlled by, the contractor.

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

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

17 ~~((40))~~ (39) "Restricted fund" means those funds the principal
18 and/or income of which is limited by agreement with or direction of the
19 donor to a specific purpose.

20 ~~((41))~~ (40) "Secretary" means the secretary of the department of
21 social and health services.

22 ~~((42))~~ (41) "Title XIX" or "Medicaid" means the 1965 amendments
23 to the social security act, P.L. 89-07, as amended.

24 ~~((43))~~ (42) "Physical plant capital improvement" means a
25 capitalized improvement that is limited to an improvement to the
26 building or the related physical plant.

27 **Sec. 4.** RCW 74.46.380 and 1991 sp.s. c 8 s 12 are each amended to
28 read as follows:

1 (1) Where depreciable assets are disposed of through sale, trade-
2 in, scrapping, exchange, theft, wrecking, or fire or other casualty,
3 depreciation shall no longer be taken on the assets. No further
4 depreciation shall be taken on permanently abandoned assets.

5 (2) Where an asset has been retired from active use but is being
6 held for stand-by or emergency service, and the department has
7 determined that it is needed and can be effectively used in the future,
8 depreciation may be taken.

9 ~~((3) If there is a sale of a nursing facility on or after July 1,
10 1991, that results in a gain on sale, the actual reimbursement for
11 depreciation paid to the selling contractor through the medicaid
12 reimbursement program shall be recovered by the department to the
13 extent of any gain on sale. The purchaser is obligated to reimburse
14 the department, whether or not the purchaser is a medicaid contractor.
15 If the department is unable to collect from the purchaser, then the
16 seller is responsible for reimbursing the department. The department
17 may establish an appropriate repayment schedule to recover
18 depreciation. If the purchaser is a medicaid contractor and the
19 contractor does not comply with the repayment schedule established by
20 the department, the department may deduct the recovery from the
21 contractor's monthly medicaid payments. The department may adopt
22 rules, as appropriate, to insure that the principles of this section
23 are implemented with respect to leased assets, or with respect to sales
24 of intangibles or specific assets only.))~~

25 **Sec. 5.** RCW 74.46.660 and 1991 sp.s. c 8 s 13 are each amended to
26 read as follows:

27 In order to participate in the prospective cost-related
28 reimbursement system established by this chapter, the person or legal
29 organization responsible for operation of a facility shall:

1 (1) Obtain a state certificate of need and/or federal capital
2 expenditure review (section 1122) approval pursuant to chapter 70.38
3 RCW and Part 100, Title 42 CFR where required;

4 (2) Hold the appropriate current license;

5 (3) Hold current Title XIX certification;

6 (4) Hold a current contract to provide services under this chapter;

7 (5) Comply with all provisions of the contract and all application
8 regulations, including but not limited to the provisions of this
9 chapter; and

10 (6) Obtain and maintain medicare certification, under Title XVIII
11 of the social security act, 42 U.S.C. Sec. 1395, as amended, for ((~~no~~
12 ~~less than fifteen percent of the facility's licensed beds~~)) an
13 appropriate number of the facility's licensed beds to be determined by
14 the facility. The department shall exempt individual facilities from
15 this requirement upon their request if it determines that additional
16 beds in that facility are not needed for the efficient operation of the
17 system.

18 **Sec. 6.** RCW 74.46.481 and 1991 sp.s. c 8 s 16 are each amended to
19 read as follows:

20 (1) The nursing services cost center shall include all costs
21 related to the direct provision of nursing and related care, including
22 fringe benefits and payroll taxes for the nursing and related care
23 personnel. For rates effective for state fiscal year 1984, the
24 department shall adopt by administrative rule a definition of "related
25 care" which shall incorporate, but not exceed services reimbursable as
26 of June 30, 1983. For rates effective for state fiscal year 1985, the
27 definition of related care shall include ancillary care. For rates
28 effective after June 30, 1991, nursing services costs, as reimbursed
29 within this chapter and as tested for reasonableness within this

1 section, shall not include costs of any purchased nursing care
2 services, including registered nurse, licensed practical nurse, and
3 nurse assistant services, obtained through service contract arrangement
4 in excess of the amount of compensation paid for such hours of nursing
5 care service had they been paid at the average hourly wage, including
6 related taxes and benefits, for in-house nursing care staff of like
7 classification at the same nursing facility, as reported in the most
8 recent cost report period.

9 (2) The department shall adopt by administrative rules a method for
10 establishing a nursing services cost center rate consistent with the
11 principles stated in this section.

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

23 (a) The correlation between alternative measures and facility
24 nursing staff; and

25 (b) The cost of collecting information for and computation of a
26 measure.

27 If regression is used, the limit shall be set at predicted nursing
28 staff plus 1.75 regression standard errors. If another statistical
29 method is utilized, the limit shall be set at a level corresponding to

1 1.75 standard errors above predicted staffing computed according to a
2 regression procedure.

3 (4) No facility shall receive reimbursement for nursing staff
4 levels in excess of the limit, except that, if a facility was
5 reimbursed for a nursing staff level in excess of the limit as of June
6 30, 1983, the facility may (~~choose~~) choose to continue to
7 receive its June, 1983 nursing services rate plus any adjustments in
8 rates, such as adjustments for economic trends, made available to all
9 facilities. However, nursing staff levels established under subsection
10 (3) of this section shall not apply to the nursing services cost center
11 reimbursement rate for the pilot facility especially designed to meet
12 the needs of persons living with AIDS as defined by RCW 70.24.017 and
13 specifically authorized for this purpose under the 1989 amendment to
14 the Washington state health plan (~~{1989 1st ex.s. c 9}~~), chapter 9,
15 Laws of 1989 1st ex. sess. The reasonableness limit established
16 pursuant to this subsection shall remain in effect for the period July
17 1, 1983 through June 30, 1985. At that time the department may revise
18 the measure of patient characteristics or method used to establish the
19 limit.

20 (5) The department shall select an index of cost increase relevant
21 to the nursing and related services cost area. In the absence of a
22 more representative index, the department shall use the medical care
23 component index as maintained by the United States bureau of labor
24 statistics.

25 (6) If a facility's nursing staff level is below the limit
26 specified in subsection (3) of this section, the department shall
27 determine the percentage increase for all items included in the nursing
28 services cost center between the facility's most recent cost reporting
29 period and the next prior cost reporting period.

1 (a) If the percentage cost increase for a facility is below the
2 increase in the selected index for the same time period, the facility's
3 reimbursement rate in the nursing services cost center shall equal the
4 facility's cost from the most recent cost reporting period plus any
5 allowance for inflation provided by legislative appropriation.

6 (b) If the percentage cost increase for a facility exceeds the
7 increase in the selected index, the department shall limit the cost
8 used for setting the facility's rate in the nursing services cost area
9 to a level reflecting the increase in the selected index.

10 (7) If the facility's nursing staff level exceeds the
11 reasonableness limit established in subsection (3) of this section, the
12 department shall determine the increase for all items included in the
13 nursing services cost center between the facility's most recent cost
14 reporting period and the next prior cost reporting period.

15 (a) If the percentage cost increase for a facility is below the
16 increase in the index selected pursuant to subsection (5) of this
17 section, the facility's reimbursement rate in the nursing cost center
18 shall equal the facility's cost from the most recent cost reporting
19 period adjusted downward to reflect the limit on nursing staff, plus
20 any allowance for inflation provided by legislative appropriation
21 subject to the provisions of subsection (4) of this section.

22 (b) If the percentage cost increase for a facility exceeds the
23 increase in the selected index, the department shall limit the cost
24 used for setting the facility's rate in the nursing services cost
25 center to a level reflecting the nursing staff limit and the cost
26 increase limit, subject to the provisions of subsection (4) of this
27 section, plus any allowance for inflation provided by legislative
28 appropriation.

29 (8) Prospective rates for the nursing services cost center (~~(, for~~
30 ~~state fiscal year 1992 only,~~) shall not be subject to the cost growth

1 index lid in subsections (5), (6), and (7) of this section. ((The lid
2 shall apply for state fiscal year 1991 rate setting and all state
3 fiscal years subsequent to fiscal year 1992.))

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

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

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

29 (a) Increases in acuity levels of contractors' residents;

30 (b) Staffing patterns for similar facilities;

1 (c) Physical plant of contractor; and
2 (d) Survey, inspection of care, and department consultation
3 results.

4 **Sec. 7.** RCW 74.46.530 and 1991 sp.s. c 8 s 17 are each amended to
5 read as follows:

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

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

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

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

6 (c) In determining the variable return allowance:

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

11 (ii) The department shall then compute the variable return
12 allowance by multiplying the appropriate percentage amounts, which
13 shall not be less than one percent and not greater than four percent,
14 by the total prospective rate for each facility, as determined in RCW
15 74.46.450 through 74.46.510. The percentage amounts will be based on
16 groupings of facilities according to the rankings as established in (i)
17 of this subsection (1)(c). Those groups of facilities with lower per
18 diem costs shall receive higher percentage amounts than those with
19 higher per diem costs.

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

24 (e) In the case of a facility which was leased by the contractor as
25 of January 1, 1980, in an arm's-length agreement, which continues to be
26 leased under the same lease agreement, and for which the annualized
27 lease payment, plus any interest and depreciation expenses associated
28 with contractor-owned assets, for the period covered by the prospective
29 rates, divided by the contractor's total patient days, minus the
30 property cost center determined according to RCW 74.46.510, is more

1 than the return on investment allowance determined according to
2 (~~(subsection (1))~~)(d) of this (~~(section)~~) subsection, the following
3 shall apply:

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

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

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

27 (f) In the case of a facility which was leased by the contractor as
28 of January 1, 1980, in an arm's-length agreement, if the lease is
29 renewed or extended pursuant to a provision of the lease, the treatment
30 provided in (~~(subsection (1))~~)(e) of this (~~(section)~~) subsection shall

1 be applied except that in the case of renewals or extensions made
2 subsequent to April 1, 1985, reimbursement for the annualized lease
3 payment shall be no greater than the reimbursement for the annualized
4 lease payment for the last year prior to the renewal or extension of
5 the lease.

6 (2) In the event that the department of health and human services
7 disallows the application of the return on investment allowances to
8 nonprofit facilities, the department shall modify the measurements of
9 net invested funds used for computing individual facility return on
10 investment allowances as follows: Net invested funds for each
11 nonprofit facility shall be multiplied by one minus the ratio of equity
12 funds to the net invested funds of all nonprofit facilities.

13 (3) Each biennium, beginning in 1985, the secretary shall review
14 the adequacy of return on investment allowances in relation to
15 anticipated requirements for maintaining, reducing, or expanding
16 nursing care capacity. The secretary shall report the results of such
17 review to the legislature and make recommendations for adjustments in
18 the return on investment rates utilized in this section, if
19 appropriate.

20 **Sec. 8.** RCW 74.46.495 and 1983 1st ex.s. c 67 s 26 are each
21 amended to read as follows:

22 (1)(a) Until June 30, 1995, references in RCW 74.46.490 and
23 74.46.481 to adjustments for inflation mean the federal health care
24 financing administration's eighteen-month nursing home market basket
25 index.

26 (b) After June 30, 1995, references in RCW 74.46.490 and 74.46.481
27 to adjustments for inflation mean percentages determined by the
28 legislature in the biennial budget act.

1 (c) From the effective date of this act, until June 30, 1995, for
2 fiscal year 1993, the health care financing administration market
3 basket under (a) of this subsection may be reduced to the extent that
4 fully funding the inflation rate would cost more than the six million
5 dollars from the general fund--state of the funds appropriated for this
6 purpose in section 2, chapter ---, Laws of 1992 (section 2 of this
7 act).

8 (2) Inflation adjustments shall be applied as follows:

9 (a) Where a prior period rate forms the basis for the next period
10 rate, the adjustment in subsection (1) of this section shall be applied
11 to that prior period rate.

12 (b) In the nursing services cost center rates beginning July 1,
13 1984, and the administration and operations cost center rate, the
14 adjustments in subsection (1) of this section shall be applied to prior
15 period annual costs in establishing July rates. Where a July rate is
16 based upon a cost report covering less than twelve months, the
17 department shall reduce the inflation adjustment factor in subsection
18 (1) of this section proportionately.

19 **Sec. 9.** RCW 74.46.360 and 1991 sp.s. c 8 s 18 are each amended to
20 read as follows:

21 (1) For all partial or whole rate periods after December 31, 1984,
22 the cost basis of land and depreciation base of depreciable assets
23 shall be the historical cost of the contractor or lessor, when the
24 assets are leased by the contractor, in acquiring the asset in an
25 arm's-length transaction and preparing it for use, less goodwill, and
26 less accumulated depreciation, if applicable, which has been incurred
27 during periods that the assets have been used in or as a facility by
28 any contractor, such accumulated depreciation to be measured in
29 accordance with subsections (2), (3), and (4) of this section and RCW

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

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

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

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

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

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

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

1 market value of the assets as determined by the department of general
2 administration through an appraisal procedure. A determination by the
3 department of general administration of fair market value shall be
4 final unless the procedure used to make such determination is shown to
5 be arbitrary and capricious.

6 (i) For all partial or whole rate periods after July 17, 1984, this
7 subsection is inoperative for any transfer of ownership of any asset,
8 depreciable or nondepreciable, occurring on or after July 18, 1984,
9 leaving (a) of this subsection to apply alone to such transfers(~~(+~~
10 ~~PROVIDED, HOWEVER, That)~~). However, this subsection shall apply to
11 transfers of ownership of assets occurring prior to January 1, 1985, if
12 the costs of such assets have never been reimbursed under medicaid cost
13 reimbursement on an owner-operated basis or as a related-party lease(~~(+~~
14 ~~PROVIDED FURTHER, That for)~~).

15 (ii) Any contractor that can document in writing an enforceable
16 agreement for the purchase of a nursing home dated prior to July 18,
17 1984, and submitted to the department prior to January 1, 1988, the
18 cost basis of allowable land and the depreciation base of the nursing
19 home, for rates established after July 18, 1984, shall not exceed the
20 fair market value of the assets at the date of purchase as determined
21 by the department of general administration through an appraisal
22 procedure.

23 (iii) For medicaid cost reimbursement purposes, an agreement to
24 purchase a nursing home dated prior to July 18, 1984, is enforceable,
25 even though such agreement contains no legal description of the real
26 property involved, notwithstanding the statute of frauds or any other
27 provision of law.

28 (c) The provisions of (a) and (b) of this subsection shall not
29 apply to an arm's-length transaction that occurs on or after July 1,
30 1993. When land and depreciable assets are acquired in an arm's-length

1 transaction on or after July 1, 1993, then the depreciable base of
2 those assets shall be the lesser of the following amounts:

3 (i) The historical cost to the buyer; or

4 (ii) The historical cost to the seller increased by the lesser of
5 the following two percentages:

6 (A) One-half of the percentage increase as measured over the same
7 period of time in the Dodge construction systems costs for nursing
8 homes, applied in the aggregate with respect to those facilities which
9 have undergone a change of ownership during the fiscal year; or

10 (B) One-half of the percentage increase as measured over the same
11 period of time in the consumer price index for all urban consumers
12 (United States city average).

13 (d) In the case of land or depreciable assets leased by the same
14 contractor since January 1, 1980, in an arm's-length lease, and
15 purchased by the lessee/contractor, the lessee/contractor shall have
16 the option:

17 (i) To have the provisions of (~~subsection~~) (b) of this
18 (~~section~~) subsection apply to the purchase; or

19 (ii) To have the reimbursement for property and return on
20 investment continue to be calculated pursuant to the provisions
21 contained in RCW 74.46.530(1) (~~(e) and~~) (f) and (g) based upon the
22 provisions of the lease in existence on the date of the purchase, but
23 only if the purchase date meets one of the following criteria:

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

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

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

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

6 ~~((d))~~ (e) For all rate periods past or future where land or
7 depreciable assets are acquired from a related organization, the
8 contractor's cost basis and depreciation base shall not exceed the base
9 the related organization had or would have had under a contract with
10 the department.

11 ~~((e))~~ (f) Where the land or depreciable asset is a donation or
12 distribution between related organizations, the cost basis or
13 depreciation base shall be the lesser of (i) fair market value, less
14 salvage value, or (ii) the cost basis or depreciation base the related
15 organization had or would have had for the asset under a contract with
16 the department.

17 NEW SECTION. Sec. 10. This act is necessary for the immediate
18 preservation of the public peace, health, or safety, or support of the
19 state government and its existing public institutions, and shall take
20 effect July 1, 1992.

21 NEW SECTION. Sec. 11. Section 1 of this act shall expire June
22 30, 1995.