

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 1890

Chapter 8, Laws of 1991

52nd Legislature
1991 Special Session

NURSING HOMES--REVISED REGULATORY PROVISIONS

EFFECTIVE DATE: 7/1/91

Passed by the House June 29, 1991
Yeas 59 Nays 38

JOE KING
**Speaker of the
House of Representatives**

Passed by the Senate June 29, 1991
Yeas 25 Nays 21

JOEL PRITCHARD
President of the Senate

Approved June 30, 1991

BOOTH GARDNER
Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 1890** as passed by the House of Representatives and the Senate on the dates hereon set forth.

ALAN THOMPSON
Chief Clerk

FILED

June 30, 1991 - 7:56 p.m.

**Secretary of State
State of Washington**

ENGROSSED HOUSE BILL 1890

Passed Legislature - 1991 1st Special Session

~~State of Washington 52nd Legislature 1991 Regular Session~~
~~Read for the first time February 13, 1991. Referred to Committee on Health~~
~~Care/Appropriations.~~
By Representative Braddock; by request of Office of Financial
Management and Dept. of Social and Health Services.

1 AN ACT Relating to regulation of nursing homes; amending RCW
2 18.51.050, 18.51.310, 43.190.020, 70.38.105, 74.08.044, 74.09.250,
3 74.09.260, 74.09.510, 74.09.700, 74.46.020, 74.46.380, 74.46.660,
4 74.46.210, 74.46.410, 74.46.481, 74.46.530, 74.46.360, and 74.46.700;
5 reenacting and amending RCW 74.09.520; repealing RCW 74.42.610,
6 74.46.710, 74.46.720, 74.46.730, 74.46.740, 74.46.750, and 74.46.760;
7 providing an effective date; and declaring an emergency.

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

9 **Sec. 1.** RCW 18.51.050 and 1989 c 372 s 1 are each amended to read
10 as follows:

11 Upon receipt of an application for license, the department shall
12 issue a license if the applicant and the nursing home facilities meet
13 the requirements established under this chapter, except that the
14 department shall issue a temporary license to a court-appointed
15 receiver for a period not to exceed six months from the date of

1 appointment. Prior to the issuance or renewal of the license, the
2 licensee shall pay a license fee as established by the department. No
3 fee shall be required of government operated institutions or court-
4 appointed receivers. All licenses issued under the provisions of this
5 chapter shall expire on a date to be set by the department, but no
6 license issued pursuant to this chapter shall exceed thirty-six months
7 in duration. When a change of ownership occurs, the entity becoming
8 the licensed operating entity of the facility shall pay a fee
9 established by the department at the time of application for the
10 license. The previously determined date of license expiration shall
11 not change. (~~The department shall conduct, without charge to the~~
12 ~~nursing homes, one annual licensing and certification survey per~~
13 ~~calendar year and one postsurvey visit.~~

14 ~~For all additional surveys required beyond the first postsurvey~~
15 ~~visit, nursing homes shall pay an inspection fee of twelve dollars per~~
16 ~~bed to the department. The inspection fee shall be due within thirty~~
17 ~~days of the completion date of the postsurvey.)) The department shall
18 establish license fees at an amount adequate to reimburse the
19 department in full for all costs of its licensing activities for
20 nursing homes, adjusted to cover the department's cost of reimbursing
21 such fees through medicaid.~~

22 All applications and fees for renewal of the license shall be
23 submitted to the department not later than thirty days prior to the
24 date of expiration of the license. All applications and fees for
25 change of ownership licenses shall be submitted to the department not
26 later than sixty days before the date of the proposed change of
27 ownership. Each license shall be issued only to the operating entity
28 and those persons named in the license application. The license is
29 valid only for the operation of the facility at the location specified
30 in the license application. Licenses are not transferable or

1 assignable. Licenses shall be posted in a conspicuous place on the
2 licensed premises.

3 **Sec. 2.** RCW 18.51.310 and 1981 2nd ex.s. c 11 s 5 are each amended
4 to read as follows:

5 ~~(1) ((Within thirty days of admission, the department shall~~
6 ~~evaluate, through review and assessment, the comprehensive plan of care~~
7 ~~for each resident supported by the department under RCW 74.09.120 as~~
8 ~~now or hereafter amended.~~

9 ~~(2) The department shall review the comprehensive plan of care for~~
10 ~~such resident at least annually or upon any change in the resident's~~
11 ~~classification.~~

12 ~~(3) Based upon the assessment of the resident's needs, the~~
13 ~~department shall assign such resident to a classification.~~
14 ~~Developmentally disabled residents shall be classified under a separate~~
15 ~~system.~~

16 ~~(4) The nursing home shall submit any request to modify a~~
17 ~~resident's classification to the department for the department's~~
18 ~~approval. The approval shall not be given until the department has~~
19 ~~reviewed the resident.~~

20 ~~(5))~~ The department shall establish, in compliance with federal
21 and state law, a comprehensive plan for utilization review as necessary
22 to safeguard against unnecessary utilization of care and services and
23 to assure quality care and services provided to nursing facility
24 residents.

25 (2) The department shall adopt licensing standards suitable for
26 implementing the civil penalty system authorized under this chapter and
27 chapter 74.46 RCW.

28 ~~((6))~~ (3) No later than July 1, 1981, the department shall adopt
29 all those regulations which meet all conditions necessary to fully

1 implement the civil penalty system authorized by this chapter, chapter
2 74.42 RCW, and chapter 74.46 RCW.

3 **Sec. 3.** RCW 43.190.020 and 1983 c 290 s 2 are each amended to read
4 as follows:

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

8 (1) A facility which:

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

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

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

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

1 **Sec. 4.** RCW 70.38.105 and 1989 1st ex.s. c 9 s 603 are each
2 amended to read as follows:

3 (1) The department is authorized and directed to implement the
4 certificate of need program in this state pursuant to the provisions of
5 this chapter.

6 (2) There shall be a state certificate of need program which is
7 administered consistent with the requirements of federal law as
8 necessary to the receipt of federal funds by the state.

9 (3) No person shall engage in any undertaking which is subject to
10 certificate of need review under subsection (4) of this section without
11 first having received from the department either a certificate of need
12 or an exception granted in accordance with this chapter.

13 (4) The following shall be subject to certificate of need review
14 under this chapter:

15 (a) The construction, development, or other establishment of a new
16 health care facility;

17 (b) The sale, purchase, or lease of part or all of any existing
18 hospital as defined in RCW 70.38.025;

19 (c) Any capital expenditure for the construction, renovation, or
20 alteration of a nursing home which substantially changes the services
21 of the facility after January 1, 1981, provided that the substantial
22 changes in services are specified by the department in rule;

23 (d) Any capital expenditure for the construction, renovation, or
24 alteration of a nursing home which exceeds the expenditure minimum as
25 defined by RCW 70.38.025. However, a capital expenditure which is not
26 subject to certificate of need review under (a), (b), (c), or (e) of
27 this subsection and which is solely for any one or more of the
28 following is not subject to certificate of need review except to the
29 extent required by the federal government as a condition to receipt of
30 federal assistance and does not substantially affect patient charges:

1 (i) Communications and parking facilities;

2 (ii) Mechanical, electrical, ventilation, heating, and air
3 conditioning systems;

4 (iii) Energy conservation systems;

5 (iv) Repairs to, or the correction of, deficiencies in existing
6 physical plant facilities which are necessary to maintain state
7 licensure;

8 (v) Acquisition of equipment, including data processing equipment,
9 which is not or will not be used in the direct provision of health
10 services;

11 (vi) Construction which involves physical plant facilities,
12 including administrative and support facilities, which are not or will
13 not be used for the provision of health services;

14 (vii) Acquisition of land; and

15 (viii) Refinancing of existing debt;

16 (e) A change in bed capacity of a health care facility which
17 increases the total number of licensed beds or redistributes beds among
18 acute care, ((skilled)) nursing((,~~—intermediate~~)) home care, and
19 boarding home care if the bed redistribution is to be effective for a
20 period in excess of six months;

21 (f) Any new tertiary health services which are offered in or
22 through a health care facility, and which were not offered on a regular
23 basis by, in, or through such health care facility within the twelve-
24 month period prior to the time such services would be offered;

25 (g) Any expenditure for the construction, renovation, or alteration
26 of a nursing home or change in nursing home services in excess of the
27 expenditure minimum made in preparation for any undertaking under
28 subsection (4) of this section and any arrangement or commitment made
29 for financing such undertaking. Expenditures of preparation shall
30 include expenditures for architectural designs, plans, working

1 drawings, and specifications. The department may issue certificates of
2 need permitting predevelopment expenditures, only, without authorizing
3 any subsequent undertaking with respect to which such predevelopment
4 expenditures are made; and

5 (h) Any increase in the number of dialysis stations in a kidney
6 disease center.

7 (5) The department is authorized to charge fees for the review of
8 certificate of need applications and requests for exemptions from
9 certificate of need review. The fees shall be sufficient to cover the
10 full cost of review and exemption, which may include the development of
11 standards, criteria, and policies.

12 (6) No person may divide a project in order to avoid review
13 requirements under any of the thresholds specified in this section.

14 **Sec. 5.** RCW 74.08.044 and 1975-'76 2nd ex.s. c 52 s 1 are each
15 amended to read as follows:

16 The department is authorized to promulgate rules and regulations
17 establishing eligibility for alternate living arrangements, and license
18 the same, including minimum standards of care, based upon need for
19 personal care and supervision beyond the level of board and room only,
20 but less than the level of care required in a hospital or a ((skilled))
21 nursing ((home)) facility as defined in the federal social security
22 act.

23 **Sec. 6.** RCW 74.09.250 and 1979 ex.s. c 152 s 6 are each amended to
24 read as follows:

25 Any person, including any corporation, that knowingly makes or
26 causes to be made, or induces or seeks to induce the making of, any
27 false statement or representation of a material fact with respect to
28 the conditions or operations of any institution or facility in order

1 that such institution or facility may qualify (either upon initial
2 certification or upon recertification) as a hospital, (~~skilled~~)
3 nursing facility, (~~intermediate care facility~~) or home health
4 agency, shall be guilty of a class C felony: PROVIDED, That the fine,
5 if imposed, shall not be in an amount more than five thousand dollars.

6 **Sec. 7.** RCW 74.09.260 and 1979 ex.s. c 152 s 7 are each amended to
7 read as follows:

8 Any person, including any corporation, that knowingly:

9 (1) Charges, for any service provided to a patient under any
10 medical care plan authorized under this chapter, money or other
11 consideration at a rate in excess of the rates established by the
12 department of social and health services(~~()~~)i or

13 (2) Charges, solicits, accepts, or receives, in addition to any
14 amount otherwise required to be paid under such plan, any gift, money,
15 donation, or other consideration (other than a charitable, religious,
16 or philanthropic contribution from an organization or from a person
17 unrelated to the patient)i:

18 (a) As a precondition of admitting a patient to a hospital(~~()~~
19 ~~skilled~~) or nursing facility(~~(, or intermediate care facility)~~)i or

20 (b) As a requirement for the patient's continued stay in such
21 facility,
22 when the cost of the services provided therein to the patient is paid
23 for, in whole or in part, under such plan, shall be guilty of a class
24 C felony: PROVIDED, That the fine, if imposed, shall not be in an
25 amount more than twenty-five thousand dollars, except as authorized by
26 RCW 9A.20.030.

27 **Sec. 8.** RCW 74.09.510 and 1989 1st ex.s. c 10 s 8 are each amended
28 to read as follows:

1 Medical assistance may be provided in accordance with eligibility
2 requirements established by the department of social and health
3 services, as defined in the social security Title XIX state plan for
4 mandatory categorically needy persons and: (1) Individuals who would
5 be eligible for cash assistance except for their institutional status;
6 (2) individuals who are under twenty-one years of age, who would be
7 eligible for aid to families with dependent children, but do not
8 qualify as dependent children and who are in (a) foster care, (b)
9 subsidized adoption, (c) (~~an intermediate care~~) a nursing facility or
10 an intermediate care facility for the mentally retarded, or (d)
11 inpatient psychiatric facilities; (3) the aged, blind, and disabled
12 who: (a) Receive only a state supplement, or (b) would not be eligible
13 for cash assistance if they were not institutionalized; (4) individuals
14 who would be eligible for but choose not to receive cash assistance;
15 (5) individuals who are enrolled in managed health care systems, who
16 have otherwise lost eligibility for medical assistance, but who have
17 not completed a current six-month enrollment in a managed health care
18 system, and who are eligible for federal financial participation under
19 Title XIX of the social security act; (6) children and pregnant women
20 allowed by federal statute for whom funding is appropriated; and (7)
21 other individuals eligible for medical services under RCW 74.09.035 and
22 74.09.700 for whom federal financial participation is available under
23 Title XIX of the social security act.

24 **Sec. 9.** RCW 74.09.520 and 1991 c 233 s 1 and 1991 c 119 s 1 are
25 each reenacted and amended to read as follows:

26 (1) The term "medical assistance" may include the following care
27 and services: (a) Inpatient hospital services; (b) outpatient hospital
28 services; (c) other laboratory and x-ray services; (d) (~~skilled~~)
29 nursing (~~home~~) facility services; (e) physicians' services, which

1 shall include prescribed medication and instruction on birth control
2 devices; (f) medical care, or any other type of remedial care as may be
3 established by the secretary; (g) home health care services; (h)
4 private duty nursing services; (i) dental services; (j) physical and
5 occupational therapy and related services; (k) prescribed drugs,
6 dentures, and prosthetic devices; and eyeglasses prescribed by a
7 physician skilled in diseases of the eye or by an optometrist,
8 whichever the individual may select; (l) personal care services, as
9 provided in this section; (m) hospice services; (n) other diagnostic,
10 screening, preventive, and rehabilitative services; and (o) like
11 services when furnished to a handicapped child by a school district as
12 part of an individualized education program established pursuant to RCW
13 28A.155.010 through 28A.155.100. For the purposes of this section, the
14 department may not cut off any prescription medications, oxygen
15 supplies, respiratory services, or other life-sustaining medical
16 services or supplies.

17 "Medical assistance," notwithstanding any other provision of law,
18 shall not include routine foot care, or dental services delivered by
19 any health care provider, that are not mandated by Title XIX of the
20 social security act unless there is a specific appropriation for these
21 services. Services included in an individualized education program for
22 a handicapped child under RCW 28A.155.010 through 28A.155.100 shall not
23 qualify as medical assistance prior to the implementation of the
24 funding process developed under RCW 74.09.524.

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

29 (3) The department shall adopt, amend, or rescind such
30 administrative rules as are necessary to ensure that Title XIX personal

1 care services are provided to eligible persons in conformance with
2 federal regulations.

3 (a) These administrative rules shall include financial eligibility
4 indexed according to the requirements of the social security act
5 providing for medicaid eligibility.

6 (b) The rules shall require clients be assessed as having a medical
7 condition requiring assistance with personal care tasks. Plans of care
8 must be approved by a physician and reviewed by a nurse every ninety
9 days.

10 (4) The department shall design and implement a means to assess the
11 level of functional disability of persons eligible for personal care
12 services under this section. The personal care services benefit shall
13 be provided to the extent funding is available according to the
14 assessed level of functional disability. Any reductions in services
15 made necessary for funding reasons should be accomplished in a manner
16 that assures that priority for maintaining services is given to persons
17 with the greatest need as determined by the assessment of functional
18 disability.

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

25 (6) Effective July 1, 1989, the department shall offer hospice
26 services in accordance with available funds. The hospice benefit under
27 this section shall terminate on June 30, 1993, unless extended by the
28 legislature.

1 **Sec. 10.** RCW 74.09.700 and 1991 c 233 s 2 are each amended to read
2 as follows:

3 (1) To the extent of available funds, medical care may be provided
4 under the limited casualty program to persons not otherwise eligible
5 for medical assistance or medical care services who are medically needy
6 as defined in the social security Title XIX state plan and medical
7 indigents in accordance with medical eligibility requirements
8 established by the department. This includes residents of (~~skilled~~)
9 nursing (~~homes, intermediate care~~) facilities(~~(7)~~) and residents of
10 intermediate care facilities for the mentally retarded who are aged,
11 blind, or disabled as defined in Title XVI of the federal social
12 security act and whose income exceeds three hundred percent of the
13 federal supplement security income benefit level.

14 (2) Determination of the amount, scope, and duration of medical
15 coverage under the limited casualty program shall be the responsibility
16 of the department, subject to the following:

17 (a) Only inpatient hospital services; outpatient hospital and rural
18 health clinic services; physicians' and clinic services; prescribed
19 drugs, dentures, prosthetic devices, and eyeglasses; (~~skilled~~)
20 nursing (~~home~~) facility services(~~(7, intermediate care facility~~
21 ~~services,7)~~); and intermediate care facility services for the mentally
22 retarded; home health services; other laboratory and x-ray services;
23 rehabilitative services, including occupational therapy; medically
24 necessary transportation; and other services for which funds are
25 specifically provided in the omnibus appropriations act shall be
26 covered;

27 (b) Persons who are medically indigent and are not eligible for a
28 federal aid program shall satisfy a deductible of not less than one
29 hundred dollars nor more than five hundred dollars in any twelve-month
30 period;

1 (c) Medical care services provided to the medically indigent and
2 received no more than seven days prior to the date of application shall
3 be retroactively certified and approved for payment on behalf of a
4 person who was otherwise eligible at the time the medical services were
5 furnished: PROVIDED, That eligible persons who fail to apply within
6 the seven-day time period for medical reasons or other good cause may
7 be retroactively certified and approved for payment.

8 (3) The department shall establish standards of assistance and
9 resource and income exemptions. All nonexempt income and resources of
10 limited casualty program recipients shall be applied against the cost
11 of their medical care services.

12 **Sec. 11.** RCW 74.46.020 and 1989 c 372 s 17 are each amended to
13 read as follows:

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

16 (1) "Accrual method of accounting" means a method of accounting in
17 which revenues are reported in the period when they are earned,
18 regardless of when they are collected, and expenses are reported in the
19 period in which they are incurred, regardless of when they are paid.

20 (2) "Ancillary care" means those services required by the
21 individual, comprehensive plan of care provided by qualified
22 therapists.

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

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

11 (5) "Assets" means economic resources of the contractor, recognized
12 and measured in conformity with generally accepted accounting
13 principles.

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

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

18 (8) "Beneficial owner" means:

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

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

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

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

1 (c) Any person who, subject to subparagraph (b) of this subsection,
2 has the right to acquire beneficial ownership of such ownership
3 interest within sixty days, including but not limited to any right to
4 acquire:

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

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

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

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

11 except that, any person who acquires an ownership interest or power
12 specified in subparagraphs (i), (ii), or (iii) of this subparagraph (c)
13 with the purpose or effect of changing or influencing the control of
14 the contractor, or in connection with or as a participant in any
15 transaction having such purpose or effect, immediately upon such
16 acquisition shall be deemed to be the beneficial owner of the ownership
17 interest which may be acquired through the exercise or conversion of
18 such ownership interest or power;

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

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

1 (ii) The pledgee agreement, prior to default, does not grant to the
2 pledgee:

3 (A) The power to vote or to direct the vote of the pledged
4 ownership interest; or

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

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

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

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

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

19 (13) "Direct care supplies" means medical, pharmaceutical, and
20 other supplies required for the direct nursing and ancillary care of
21 medical care recipients.

22 (14) "Entity" means an individual, partnership, corporation, or any
23 other association of individuals capable of entering enforceable
24 contracts.

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

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

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

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

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

10 (19) "Gain on sale" means the difference between the total net book
11 value of nursing home assets, including but not limited to land,
12 building and equipment, and the total sales price of all such assets.

13 (20) "Generally accepted accounting principles" means accounting
14 principles approved by the financial accounting standards board (FASB).

15 (~~(20)~~) (21) "Generally accepted auditing standards" means
16 auditing standards approved by the American institute of certified
17 public accountants (AICPA).

18 (~~(21)~~) (22) "Goodwill" means the excess of the price paid for a
19 business over the fair market value of all other identifiable,
20 tangible, and intangible assets acquired.

21 (~~(22)~~) (23) "Historical cost" means the actual cost incurred in
22 acquiring and preparing an asset for use, including feasibility
23 studies, architect's fees, and engineering studies.

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

26 (~~(24)~~) (25) "Joint facility costs" means any costs which
27 represent resources which benefit more than one facility, or one
28 facility and any other entity.

29 (~~(25)~~) (26) "Lease agreement" means a contract between two
30 parties for the possession and use of real or personal property or

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

13 ~~((26))~~ (27) "Medical care program" means medical assistance
14 provided under RCW 74.09.500 or authorized state medical care services.

15 ~~((27))~~ (28) "Medical care recipient" or "recipient" means an
16 individual determined eligible by the department for the services
17 provided in chapter 74.09 RCW.

18 ~~((28))~~ (29) "Net book value" means the historical cost of an
19 asset less accumulated depreciation.

20 ~~((29))~~ (30) "Net invested funds" means the net book value of
21 tangible fixed assets employed by a contractor to provide services
22 under the medical care program, including land, buildings, and
23 equipment as recognized and measured in conformity with generally
24 accepted accounting principles, plus an allowance for working capital
25 which shall be five percent of the allowable costs of each contractor
26 for the previous calendar year.

27 ~~((30))~~ (31) "Operating lease" means a lease under which rental or
28 lease expenses are included in current expenses in accordance with
29 generally accepted accounting principles.

1 (~~(31)~~) (32) "Owner" means a sole proprietor, general or limited
2 partners, and beneficial interest holders of five percent or more of a
3 corporation's outstanding stock.

4 (~~(32)~~) (33) "Ownership interest" means all interests beneficially
5 owned by a person, calculated in the aggregate, regardless of the form
6 which such beneficial ownership takes.

7 (~~(33)~~) (34) "Patient day" or "client day" means a calendar day of
8 care which will include the day of admission and exclude the day of
9 discharge; except that, when admission and discharge occur on the same
10 day, one day of care shall be deemed to exist.

11 (~~(34)~~) (35) "Professionally designated real estate appraiser"
12 means an individual who is regularly engaged in the business of
13 providing real estate valuation services for a fee, and who is deemed
14 qualified by a nationally recognized real estate appraisal educational
15 organization on the basis of extensive practical appraisal experience,
16 including the writing of real estate valuation reports as well as the
17 passing of written examinations on valuation practice and theory, and
18 who by virtue of membership in such organization is required to
19 subscribe and adhere to certain standards of professional practice as
20 such organization prescribes.

21 (~~(35)~~) (36) "Qualified therapist" means:

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

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

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

28 (d) A mental retardation professional who is either a qualified
29 therapist or a therapist approved by the department who has had

1 specialized training or one year's experience in treating or working
2 with the mentally retarded or developmentally disabled;

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

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

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

8 (h) An occupational therapist who is a graduate of a program in
9 occupational therapy, or who has the equivalent of such education or
10 training.

11 (~~(36)~~) (37) "Questioned costs" means those costs which have been
12 determined in accordance with generally accepted accounting principles
13 but which may constitute disallowed costs or departures from the
14 provisions of this chapter or rules and regulations adopted by the
15 department.

16 (~~(37)~~) (38) "Records" means those data supporting all financial
17 statements and cost reports including, but not limited to, all general
18 and 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.

1 (~~(39)~~) (40) "Restricted fund" means those funds the principal
2 and/or income of which is limited by agreement with or direction of the
3 donor to a specific purpose.

4 (~~(40)~~) (41) "Secretary" means the secretary of the department of
5 social and health services.

6 (~~(41)~~) (42) "Title XIX" or "Medicaid" means the 1965 amendments
7 to the social security act, P.L. 89-07, as amended.

8 (~~(42)~~) (43) "Physical plant capital improvement" means a
9 capitalized improvement that is limited to an improvement to the
10 building or the related physical plant.

11 **Sec. 12.** RCW 74.46.380 and 1980 c 177 s 38 are each amended to
12 read as follows:

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

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

21 (3) If there is a sale of a nursing facility on or after July 1,
22 1991, that results in a gain on sale, the actual reimbursement for
23 depreciation paid to the selling contractor through the medicaid
24 reimbursement program shall be recovered by the department to the
25 extent of any gain on sale. The purchaser is obligated to reimburse
26 the department, whether or not the purchaser is a medicaid contractor.
27 If the department is unable to collect from the purchaser, then the
28 seller is responsible for reimbursing the department. The department
29 may establish an appropriate repayment schedule to recover

1 depreciation. If the purchaser is a medicaid contractor and the
2 contractor does not comply with the repayment schedule established by
3 the department, the department may deduct the recovery from the
4 contractor's monthly medicaid payments. The department may adopt
5 rules, as appropriate, to insure that the principles of this section
6 are implemented with respect to leased assets, or with respect to sales
7 of intangibles or specific assets only.

8 **Sec. 13.** RCW 74.46.660 and 1980 c 177 s 66 are each amended to
9 read as follows:

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

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

16 (2) Hold the appropriate current license;

17 (3) Hold current Title XIX certification;

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

19 (~~and~~)

20 (5) Comply with all provisions of the contract and all application
21 regulations, including but not limited to the provisions of this
22 chapter; and

23 (6) Obtain and maintain medicare certification, under Title XVIII
24 of the social security act, 42 U.S.C. Sec. 1395, as amended, for no
25 less than fifteen percent of the facility's licensed beds.

26 **Sec. 14.** RCW 74.46.210 and 1980 c 177 s 21 are each amended to
27 read as follows:

1 (~~All necessary and ordinary expenses a contractor incurs in~~
2 ~~providing care services will be allowable costs.~~) All documented
3 costs that are ordinary, necessary, and related to the care of medical
4 care recipients and are not expressly unallowable will be allowable
5 costs. These expenses include:

6 (1) Meeting licensing and certification standards;

7 (2) Meeting standards of providing regular room, nursing,
8 ancillary, and dietary services, as established by department rule and
9 regulation pursuant to chapter 211, Laws of 1979 ex. sess.; and

10 (3) Fulfilling accounting and reporting requirements imposed by
11 this chapter.

12 **Sec. 15.** RCW 74.46.410 and 1989 c 372 s 2 are each amended to read
13 as follows:

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

17 (2) Unallowable costs include, but are not limited to, the
18 following:

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

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

26 (c) Costs associated with a capital expenditure subject to section
27 1122 approval (part 100, Title 42 C.F.R.) if the department found it
28 was not consistent with applicable standards, criteria, or plans. If
29 the department was not given timely notice of a proposed capital

1 expenditure, all associated costs will be unallowable up to the date
2 they are determined to be reimbursable under applicable federal
3 regulations;

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

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

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

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

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

17 (i) Costs applicable to services, facilities, and supplies
18 furnished by a related organization in excess of the lower of the cost
19 to the related organization or the price of comparable services,
20 facilities, or supplies purchased elsewhere;

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

28 (k) Charity and courtesy allowances;

29 (l) Cash, assessments, or other contributions, excluding dues, to
30 charitable organizations, professional organizations, trade

1 associations, or political parties, and costs incurred to improve
2 community or public relations;

3 (m) Vending machine expenses;

4 (n) Expenses for barber or beautician services not included in
5 routine care;

6 (o) Funeral and burial expenses;

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

8 (q) Personal items such as cosmetics, smoking materials, newspapers
9 and magazines, and clothing, except those used in patient activity
10 programs;

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

13 (s) Penalties and fines;

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

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

17 (v) Costs of special care services except where authorized by the
18 department;

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

21 (x) Expenses of profit-sharing plans;

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

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

27 (aa) All expenses of maintaining professional licenses or
28 membership in professional organizations;

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

30 (cc) Amortization of goodwill;

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

4 (ee) Legal and consultant fees in connection with a fair hearing
5 against the department where a decision is rendered in favor of the
6 department or where otherwise the determination of the department
7 stands;

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

10 (gg) Lease acquisition costs and other intangibles not related to
11 patient care;

12 (hh) All rental or lease costs other than those provided in RCW
13 74.46.300 on and after the effective date of RCW 74.46.510 and
14 74.46.530;

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

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

25 (kk) Costs and fees otherwise allowable for accounting and
26 bookkeeping services, whether purchased, allocated by a home office,
27 regional office or management company, or performed by the contractor
28 or employees of the contractor, in excess of the eighty-fifth
29 percentile of such costs reported by all contractors for the most
30 recent cost report period: PROVIDED, That this limit shall not apply

1 if a contractor has not exceeded this percentile in any of the
2 preceding three annual cost report periods;

3 (ll) Compensation paid for any purchased nursing care services,
4 including registered nurse, licensed practical nurse, and nurse
5 assistant services, obtained through service contract arrangement in
6 excess of the amount of compensation paid for such hours of nursing
7 care service had they been paid at the average hourly wage, including
8 related taxes and benefits, for in-house nursing care staff of like
9 classification at the same nursing facility, as reported in the most
10 recent cost report period;

11 (mm) For all partial or whole rate periods after July 17, 1984,
12 costs of land and depreciable assets that cannot be reimbursed under
13 the Deficit Reduction Act of 1984 and implementing state statutory and
14 regulatory provisions.

15 **Sec. 16.** RCW 74.46.481 and 1990 c 207 s 1 are each amended to read
16 as follows:

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

1 in excess of the amount of compensation paid for such hours of nursing
2 care service had they been paid at the average hourly wage, including
3 related taxes and benefits, for in-house nursing care staff of like
4 classification at the same nursing facility, as reported in the most
5 recent cost report period.

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

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

20 (a) The correlation between alternative measures and facility
21 nursing staff; and

22 (b) The cost of collecting information for and computation of a
23 measure.

24 If regression is used, the limit shall be set at predicted nursing
25 staff plus 1.75 regression standard errors. If another statistical
26 method is utilized, the limit shall be set at a level corresponding to
27 1.75 standard errors above predicted staffing computed according to a
28 regression procedure.

29 (4) No facility shall receive reimbursement for nursing staff
30 levels in excess of the limit, except that, if a facility was

1 reimbursed for a nursing staff level in excess of the limit as of June
2 30, 1983, the facility may chose to continue to receive its June, 1983
3 nursing services rate plus any adjustments in rates, such as
4 adjustments for economic trends, made available to all facilities.
5 However, nursing staff levels established under subsection (3) of this
6 section shall not apply to the nursing services cost center
7 reimbursement rate for the pilot facility especially designed to meet
8 the needs of persons living with AIDS as defined by RCW 70.24.017 and
9 specifically authorized for this purpose under the 1989 amendment to
10 the Washington state health plan [1989 1st ex.s. c 9]. The
11 reasonableness limit established pursuant to this subsection shall
12 remain in effect for the period July 1, 1983 through June 30, 1985. At
13 that time the department may revise the measure of patient
14 characteristics or method used to establish the limit.

15 (5) The department shall select an index of cost increase relevant
16 to the nursing and related services cost area. In the absence of a
17 more representative index, the department shall use the medical care
18 component index as maintained by the United States bureau of labor
19 statistics.

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

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

1 (b) If the percentage cost increase for a facility exceeds the
2 increase in the selected index, the department shall limit the cost
3 used for setting the facility's rate in the nursing services cost area
4 to a level reflecting the increase in the selected index.

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

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

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

24 (8) Prospective rates for the nursing services cost center, for
25 state fiscal year 1992 only, shall not be subject to the cost growth
26 index lid in subsections (5), (6), and (7) of this section. The lid
27 shall apply for state fiscal year 1991 rate setting and all state
28 fiscal years subsequent to fiscal year 1992.

29 (9) The department is authorized to determine on a systematic basis
30 facilities with unmet patient care service needs. The department may

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

11 ~~((+9))~~ (10) The department shall establish a method for
12 identifying patients with exceptional care requirements and a method
13 for establishing or negotiating on a consistent basis rates for such
14 patients.

15 ~~((+10))~~ (11) The department, in consultation with interested
16 parties, shall adopt rules to establish the criteria the department
17 will use in reviewing any requests by a contractor for a prospective
18 rate adjustment to be used to increase the number of nursing staff.
19 These rules shall also specify the time period for submission and
20 review of staffing requests: PROVIDED, That a decision on a staffing
21 request shall not take longer than sixty days from the date the
22 department receives such a complete request. In establishing the
23 criteria, the department may consider, but is not limited to, the
24 following:

- 25 (a) Increases in acuity levels of contractors' residents;
 - 26 (b) Staffing patterns for similar facilities;
 - 27 (c) Physical plant of contractor; and
 - 28 (d) Survey, inspection of care, and department consultation
- 29 results.

1 **Sec. 17.** RCW 74.46.530 and 1985 c 361 s 17 are each amended to
2 read as follows:

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

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

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

1 for net invested funds based on an appraisal conducted according to RCW
2 74.46.360(1).

3 (c) In determining the variable return allowance:

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

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

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

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

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

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

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

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

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

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

15 **Sec. 18.** RCW 74.46.360 and 1989 c 372 s 14 are each amended to
16 read as follows:

17 (1) For all partial or whole rate periods after December 31, 1984,
18 the cost basis of land and depreciation base of depreciable assets
19 shall be the historical cost of the contractor or lessor, when the
20 assets are leased by the contractor, in acquiring the asset in an
21 arm's-length transaction and preparing it for use, less goodwill, and
22 less accumulated depreciation, if applicable, which has been incurred
23 during periods that the assets have been used in or as a facility by
24 any contractor, such accumulated depreciation to be measured in
25 accordance with subsections (2), (3), and (4) of this section and RCW
26 74.46.350 and 74.46.370. If the department challenges the historical
27 cost of an asset, or if the contractor cannot or will not provide the
28 historical costs, the department will have the department of general
29 administration, through an appraisal procedure, determine the fair

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

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

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

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

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

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

20 (b) The provisions of (a) of this subsection shall not apply to the
21 most recent arm's-length acquisition if it occurs at least ten years
22 after the ownership of the assets has been previously transferred in an
23 arm's-length transaction nor to the first arm's-length acquisition that
24 occurs after January 1, 1980, for facilities participating in the
25 medical care program prior to January 1, 1980. The new cost basis or
26 depreciation base for such acquisitions shall not exceed the fair
27 market value of the assets as determined by the department of general
28 administration through an appraisal procedure. A determination by the
29 department of general administration of fair market value shall be
30 final unless the procedure used to make such determination is shown to

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

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

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

27 (ii) To have the reimbursement for property and return on
28 investment continue to be calculated pursuant to the provisions
29 contained in RCW 74.46.530(1) (e) and (f) based upon the provisions of

1 the lease in existence on the date of the purchase, but only if the
2 purchase date meets one of the following criteria:

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

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

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

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

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

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

24 **Sec. 19.** RCW 74.46.700 and 1980 c 177 s 70 are each amended to
25 read as follows:

26 ((1)) Each ((contractor)) nursing home shall establish and
27 maintain, as a service to the ((medical care recipient)) resident, a
28 bookkeeping system incorporated into the business records for all

1 ((recipient)) resident moneys entrusted to the contractor and received
2 by the facility for the ((recipient)) resident.

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

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

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

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

11 ~~(4) The recipient must be given at least a quarterly reporting of
12 all financial transactions in his or her trust account. The
13 representative payee, the guardian, and/or other designated agents of
14 the recipient must be sent a copy of said reporting on the same basis
15 as the recipient.))~~

16 The department shall adopt rules to ensure that resident personal
17 funds handled by the facility are maintained by each nursing home in a
18 manner that is, at a minimum, consistent with federal requirements.

19 NEW SECTION. Sec. 20. The following acts or parts of acts are
20 each repealed:

21 (1) RCW 74.42.610 and 1980 c 177 s 85 & 1979 ex.s. c 211 s 61;

22 (2) RCW 74.46.710 and 1983 1st ex.s. c 67 s 37 & 1980 c 177 s 71;

23 (3) RCW 74.46.720 and 1983 1st ex.s. c 67 s 38 & 1980 c 177 s 72;

24 (4) RCW 74.46.730 and 1980 c 177 s 73;

25 (5) RCW 74.46.740 and 1980 c 177 s 74;

26 (6) RCW 74.46.750 and 1980 c 177 s 75; and

27 (7) RCW 74.46.760 and 1985 c 7 s 149 & 1980 c 177 s 76.

1 NEW SECTION. **Sec. 21.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and shall take
4 effect July 1, 1991.

Passed the House June 29, 1991.

Passed the Senate June 29, 1991.

Approved by the Governor June 30, 1991.

Filed in Office of Secretary of State June 30, 1991.