
HOUSE BILL 1974

State of Washington

53rd Legislature

1993 Regular Session

By Representatives Leonard and Valle; by request of Department of Social and Health Services

Read first time 02/19/93. Referred to Committee on Appropriations.

1 AN ACT Relating to nursing home auditing and reimbursement;
2 amending RCW 74.46.020, 74.46.050, 74.46.230, 74.46.420, 74.46.430,
3 74.46.460, 74.46.470, 74.46.475, 74.46.481, 74.46.490, 74.46.500, and
4 74.46.530; reenacting and amending RCW 74.46.180; adding a new section
5 to chapter 74.46 RCW; repealing RCW 74.46.495; providing an effective
6 date; and declaring an emergency.

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

8 **Sec. 1.** RCW 74.46.020 and 1991 sp.s. c 8 s 11 are each amended to
9 read as follows:

10 Unless the context clearly requires otherwise, the definitions in
11 this section apply throughout this chapter.

12 (1) "Accrual method of accounting" means a method of accounting in
13 which revenues are reported in the period when they are earned,
14 regardless of when they are collected, and expenses are reported in the
15 period in which they are incurred, regardless of when they are paid.

16 (2) "Ancillary care" means those services required by the
17 individual, comprehensive plan of care provided by qualified
18 therapists.

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

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

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

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

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

25 (8) "Beneficial owner" means:

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

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

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

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

38 (c) Any person who, subject to subparagraph (b) of this subsection,
39 has the right to acquire beneficial ownership of such ownership

1 interest within sixty days, including but not limited to any right to
2 acquire:

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

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

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

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

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

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

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

29 (ii) The pledgee agreement, prior to default, does not grant to the
30 pledgee:

31 (A) The power to vote or to direct the vote of the pledged
32 ownership interest; or

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

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

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

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

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

9 (13) "Direct care supplies" means medical, pharmaceutical, and
10 other supplies required for the direct nursing and ancillary care of
11 medical care recipients.

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

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

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

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

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

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

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

35 (21) "Generally accepted auditing standards" means auditing
36 standards approved by the American institute of certified public
37 accountants (AICPA).

1 (22) "Goodwill" means the excess of the price paid for a business
2 over the fair market value of all other identifiable, tangible, and
3 intangible assets acquired.

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

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

9 (25) "Joint facility costs" means any costs which represent
10 resources which benefit more than one facility, or one facility and any
11 other entity.

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

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

28 (28) "Medical care recipient" or "recipient" means an individual
29 determined eligible by the department for the services provided in
30 chapter 74.09 RCW.

31 (29) "Net book value" means the historical cost of an asset less
32 accumulated depreciation.

33 (30) "Net invested funds" means the net book value of tangible
34 fixed assets employed by a contractor to provide services under the
35 medical care program, including land, buildings, and equipment as
36 recognized and measured in conformity with generally accepted
37 accounting principles, plus an allowance for working capital which
38 shall be five percent of the allowable costs of each contractor for the
39 previous calendar year.

1 (31) "Operating lease" means a lease under which rental or lease
2 expenses are included in current expenses in accordance with generally
3 accepted accounting principles.

4 (32) "Owner" means a sole proprietor, general or limited partners,
5 and beneficial interest holders of five percent or more of a
6 corporation's outstanding stock.

7 (33) "Ownership interest" means all interests beneficially owned by
8 a person, calculated in the aggregate, regardless of the form which
9 such beneficial ownership takes.

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

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

24 (36) "Qualified therapist" means:

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

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

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

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

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

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

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

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

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

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

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

15 (39) "Related organization" means an entity which is under common
16 ownership and/or control with, or has control of, or is controlled by,
17 the contractor.

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

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

25 (40) "Restricted fund" means those funds the principal and/or
26 income of which is limited by agreement with or direction of the donor
27 to a specific purpose.

28 (41) "Secretary" means the secretary of the department of social
29 and health services.

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

32 (43) "Physical plant capital improvement" means a capitalized
33 improvement that is limited to an improvement to the building or the
34 related physical plant.

35 **Sec. 2.** RCW 74.46.050 and 1985 c 361 s 5 are each amended to read
36 as follows:

37 If the cost report is not properly completed or if it is not
38 received by the due date, all or part of any payments due under the

1 contract may be withheld by the department until such time as the
2 required cost report is properly completed and received. Intentional
3 misreporting intended to affect or manipulate cost growth limits in
4 this chapter is subject to civil fines or other sanctions adopted by
5 the department in rule. The department shall issue special cost
6 reporting instructions to accommodate changes in cost centers effective
7 July 1, 1993.

8 **Sec. 3.** RCW 74.46.180 and 1987 c 476 s 1 and 1987 c 283 s 9 are
9 each reenacted and amended to read as follows:

10 (1) The state shall make payment of any underpayments within thirty
11 days after the date the preliminary or final settlement report is
12 submitted to the contractor.

13 (2) A contractor found to have received either overpayments or
14 erroneous payments under a preliminary or final settlement shall refund
15 such payments to the state within thirty days after the date the
16 preliminary or final settlement report is submitted to the contractor,
17 subject to the provisions of subsections (3), (4), and (7) of this
18 section.

19 (3) Within the cost centers of nursing services and food, all
20 savings resulting from the respective allowable costs being lower than
21 the respective reimbursement rate paid to the contractor during the
22 report period shall be refunded to the department. However, in
23 computing a preliminary or final settlement, savings in a cost center
24 may be shifted to cover a deficit in another cost center up to the
25 amount of any savings: PROVIDED, That not more than twenty percent of
26 the rate in a cost center may be shifted into that cost center and no
27 shifting may be made into the property cost center: PROVIDED FURTHER,
28 That there shall be no shifting out of nursing services, and savings in
29 food shall be shifted only to cover deficits in the nursing services
30 cost center: PROVIDED FURTHER, That there shall be no shifting from
31 the operational to the administrative cost center.

32 (4) Within the administrative, operational, and property cost
33 centers ((of administration and operations and property)), the
34 contractor shall retain at least fifty percent, but not more than
35 seventy-five percent, of any savings resulting from the respective
36 audited allowable costs being lower than the respective reimbursement
37 rates paid to the contractor during the report period multiplied by the
38 number of authorized medical care client days in which said rates were

1 in effect, except that no savings may be retained if reported costs in
2 the property cost center (~~(and)~~), the (~~(administration)~~) administrative
3 cost center, and (~~(operations)~~) the operational cost center exceed
4 audited allowable costs by ten cents or more per patient day. The
5 secretary, by rule and regulation, shall establish the basis for the
6 specific percentages of savings to the contractors. Such rules and
7 regulations may provide for differences in the percentages allowed for
8 each cost center to individual facilities based on performance measures
9 related to administrative efficiency.

10 (5) All (~~(allowances)~~) return on investment rate payments provided
11 by RCW 74.46.530 shall be retained by the contractor to the extent net
12 invested funds are substantiated by department field audit. Any
13 industrial insurance dividend or premium discount under RCW 51.16.035
14 shall be retained by the contractor to the extent that such dividend or
15 premium discount is attributable to the contractor's private patients.

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

19 (a) Deduct the amount of refund due, plus any interest accrued
20 under RCW 43.20B.695, from payment amounts due the contractor; or

21 (b) In the instance the contract has been terminated, (i) deduct
22 the amount of refund due, plus interest assessed at the rate and in the
23 manner provided in RCW 43.20B.695, from any payments due; or (ii)
24 recover the amount due, plus any interest assessed under RCW
25 43.20B.695, from security posted with the department or by any other
26 lawful means.

27 (7) Where the facility is pursuing timely-filed judicial or
28 administrative remedies in good faith regarding settlement issues, the
29 contractor need not refund nor shall the department withhold from the
30 facility current payment amounts the department claims to be due from
31 the facility but which are specifically disputed by the contractor. If
32 the judicial or administrative remedy sought by the facility is not
33 granted after all appeals are exhausted or mutually terminated, the
34 facility shall make payment of such amounts due plus interest accrued
35 from the date of filing of the appeal, as payable on judgments, within
36 sixty days of the date such decision is made.

37 **Sec. 4.** RCW 74.46.230 and 1980 c 177 s 23 are each amended to read
38 as follows:

1 (1) The necessary and ordinary one-time expenses directly incident
2 to the preparation of a newly constructed or purchased building by a
3 contractor for operation as a licensed facility shall be allowable
4 costs. These expenses shall be limited to start-up and organizational
5 costs incurred prior to the admission of the first patient.

6 (2) Start-up costs shall include, but not be limited to,
7 administrative and nursing salaries, utility costs, taxes, insurance,
8 repairs and maintenance, and training; except, that they shall exclude
9 expenditures for capital assets. These costs will be allowable in the
10 (~~administration and operations~~) administrative cost center if they
11 are amortized over a period of not less than sixty months beginning
12 with the month in which the first patient is admitted for care.

13 (3) Organizational costs are those necessary, ordinary, and
14 directly incident to the creation of a corporation or other form of
15 business of the contractor including, but not limited to, legal fees
16 incurred in establishing the corporation or other organization and fees
17 paid to states for incorporation; except, that they do not include
18 costs relating to the issuance and sale of shares of capital stock or
19 other securities. Such organizational costs will be allowable in the
20 (~~administration and operations~~) administrative cost center if they
21 are amortized over a period of not less than sixty months beginning
22 with the month in which the first patient is admitted for care.

23 **Sec. 5.** RCW 74.46.420 and 1985 c 361 s 18 are each amended to read
24 as follows:

25 The following principles are inherent in RCW 74.46.430 through
26 74.46.590:

27 (1) Reimbursement rates will be set prospectively on a per patient
28 day basis(~~and~~).

29 (2) The rates (~~so established~~) in the nursing services, food,
30 administrative, and operational cost centers, will be adjusted at the
31 time they are set for economic (~~conditions and~~) trends (~~in~~
32 accordance with appropriations made by the legislature as consistent
33 with federal requirements for the period to be covered by such rates)
34 and conditions at the lower of: (a) The most recent nursing facility
35 with capital and medical fees price index eighteen-month forecast
36 provided by the health care financing administration (HCFA) or (b) one
37 and one-half times the median percentage cost growth limit of the
38 nursing facility's peer group in each cost center used for current July

1 1 rate setting as provided in this chapter. If HCFA ceases to provide
2 the forecast in the future the department shall select another
3 forecast.

4 (3) The forecast referenced in subsection (2)(a) of this section
5 shall be regionalized by multiplying the HCFA forecast percentage by a
6 ratio or fraction. The numerator of the fraction shall be the
7 percentage of growth during the most recent calendar report year in the
8 medical care expenditure category of the consumer price index for all
9 urban consumers (CPI-U) issued by the United States department of labor
10 bureau of labor statistics for the west region. The denominator of
11 the fraction shall be the percentage of growth for the United States as
12 a whole as indicated by the medical care expenditure category of the
13 CPI-U during the same most recent calendar report year.

14 (4) Prospective rates in the administrative and operational cost
15 centers shall not be adjusted for economic trends and conditions as
16 authorized in this chapter above the pertinent prospective peer group
17 per patient day rate ceilings set forth in this chapter.

18 (5) If a July 1 rate is based on a cost report covering less than
19 twelve months, the department shall reduce proportionally the
20 adjustment authorized by this section for economic trends and
21 conditions.

22 **Sec. 6.** RCW 74.46.430 and 1987 2nd ex.s. c 1 s 2 are each amended
23 to read as follows:

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

29 (2) As required, the department may modify such maximum per patient
30 day rates pursuant to the administrative review provisions of RCW
31 74.46.780.

32 ~~(3) ((Until the effective date of RCW 74.46.510 and 74.46.530, the~~
33 ~~maximum prospective reimbursement rates for the administration and~~
34 ~~operations and the property cost centers shall be established based~~
35 ~~upon a minimum facility occupancy level of eighty five percent.~~

36 ~~(4) On and after the effective date of RCW 74.46.510 and~~
37 ~~74.46.530,))~~ The maximum prospective reimbursement rates for the
38 ~~((administration and operations))~~ administrative, operational, and the

1 property cost centers, and the return on investment ((allowance)) shall
2 be established based upon a minimum facility occupancy level of eighty-
3 five percent.

4 ~~((+5))~~ (4) All contractors shall be required to adjust and
5 maintain wages for all employees to a minimum hourly wage ((established
6 by the legislature in the biennial appropriations act, if the
7 legislature appropriates moneys to fund prospectively the portion of
8 the minimum wage attributable to services to medicaid patients.
9 Prospective rate revisions to fund any minimum wage increases shall be
10 made only on the dates authorized in the appropriation act. The
11 department shall by regulation limit reimbursement to the amount
12 appropriated for legislatively authorized enhancement for
13 nonadministrative wages and benefits above the moneys necessary to fund
14 minimum wages specified in this section. The department in considering
15 reimbursement for legislatively authorized wage enhancements will take
16 into consideration facility wage history over the past three cost
17 report periods)) of four dollars and seventy-six cents per hour
18 beginning January 1, 1988, and five dollars and fifteen cents per hour
19 beginning January 1, 1989.

20 **Sec. 7.** RCW 74.46.460 and 1987 c 476 s 3 are each amended to read
21 as follows:

22 (1) Each contractor's reimbursement rates will be determined
23 prospectively at least once each calendar year, to be effective July
24 1st.

25 (2) Rates may be adjusted as determined by the department to take
26 into account variations in the distribution of patient classifications
27 or changes in patient characteristics from the prior reporting year,
28 program changes required by the department, or changes in staffing
29 levels at a facility required by the department. Rates shall be
30 adjusted by the amount of legislatively authorized enhancements in
31 accordance with RCW 74.46.430(5) and 74.46.470(2). Rates may also be
32 adjusted to cover costs associated with placing a nursing home in
33 receivership which costs are not covered by the rate of the former
34 contractor, including: Compensation of the receiver, reasonable
35 expenses of receivership and transition of control, and costs incurred
36 by the receiver in carrying out court instructions or rectifying
37 deficiencies found. Rates shall be adjusted for any capitalized
38 additions or replacements made as a condition for licensure or

1 certification. Rates shall be adjusted for capitalized improvements
2 done under RCW 74.46.465.

3 ~~(3) ((Where the contractor participated in the provisions of~~
4 ~~prospective cost-related reimbursement in effect prior to July 1, 1983,~~
5 ~~such contractor's prospective rate effective July 1, 1983, will be~~
6 ~~determined utilizing the contractor's desk-reviewed allowable costs for~~
7 ~~calendar year 1982.~~

8 ~~(4))~~ All prospective reimbursement rates for ~~((1984—and~~
9 ~~thereafter))~~ all rate periods shall be determined by utilizing the
10 prior year's desk-reviewed cost reports, subject to all limitations and
11 principles of rate setting contained in this chapter or established by
12 rule under the department's rule-making authority.

13 **Sec. 8.** RCW 74.46.470 and 1987 c 476 s 4 are each amended to read
14 as follows:

15 (1) A contractor's reimbursement rates for medical care recipients
16 will be determined utilizing net invested funds and desk-reviewed cost
17 report data within the following cost centers:

- 18 (a) Nursing services;
- 19 (b) Food;
- 20 (c) ~~((Administration and operations; and))~~ Administrative;
- 21 (d) Operational; and
- 22 (e) Property.

23 (2) There shall be for the time period January 1988 through June
24 1990 only an enhancement cost center established to reimburse
25 contractors for specific legislatively authorized enhancements for
26 nonadministrative wages and benefits to ensure that such enhancements
27 are used exclusively for the legislatively authorized purposes. For
28 purposes of settlement, funds appropriated to this cost center shall
29 only be used for expenditures for which the legislative authorization
30 is granted. Such funds may be used only in the following
31 circumstances:

32 (a) The contractor has increased expenditures for which legislative
33 authorization is granted to at least the highest level paid in any of
34 the last three cost years, plus, beginning July 1, 1987, any percentage
35 inflation adjustment as was granted each year under RCW 74.46.495; and

36 (b) All funds shifted from the enhancement cost center are shown to
37 have been expended for legislatively authorized enhancements.

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

5 (4) For purposes of this section, "nonadministrative wages and
6 benefits" means wages and payroll taxes paid with respect to, and the
7 employer share of the cost of benefits provided to, employees in job
8 classes specified in an appropriation, which may not include
9 administrators, assistant administrators, or administrators in
10 training.

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

14 **Sec. 9.** RCW 74.46.475 and 1985 c 361 s 13 are each amended to read
15 as follows:

16 (1) The department shall analyze the submitted cost report of each
17 contractor to determine if the information is correct, complete, and
18 reported in conformance with generally accepted accounting principles,
19 the requirements of this chapter and such rules (~~and regulations~~) as
20 the (~~secretary~~) department may adopt. If the analysis finds that the
21 cost report is incorrect or incomplete or that some costs reported are
22 unallowable, the department may make adjustments to the reported
23 information for purposes of establishing reimbursement rates. A
24 schedule of such adjustments shall be provided to contractors and shall
25 include an explanation for the adjustment and the dollar amount of the
26 adjustment. Adjustments shall be subject to review and appeal as
27 provided in this chapter.

28 (2) The department shall accumulate data from properly completed
29 cost reports for use in:

- 30 (a) Exception profiling; and
31 (b) Establishing rates.

32 (3) The department may further utilize such accumulated data for
33 analytical, statistical, or informational purposes as necessary.

34 **Sec. 10.** RCW 74.46.481 and 1991 sp.s. c 8 s 16 are each amended to
35 read as follows:

36 (1) The nursing services cost center shall include for reporting
37 purposes all costs related to the direct provision of nursing and

1 related care, including fringe benefits and payroll taxes for the
2 nursing and related care personnel. (~~For rates effective for state~~
3 ~~fiscal year 1984,~~) The department shall adopt by administrative rule
4 a definition of "related care" (~~which shall incorporate, but not~~
5 ~~exceed services reimbursable as of June 30, 1983. For rates effective~~
6 ~~for state fiscal year 1985, the definition of related care shall~~
7 ~~include ancillary care~~). For rates effective after June 30, 1991,
8 nursing services costs, as reimbursed within this chapter and as
9 (~~tested~~) limited for (~~reasonableness~~) nursing cost growth within
10 this section, shall not include costs of any purchased nursing care
11 services, including registered nurse, licensed practical nurse, and
12 nurse assistant services, obtained through service contract arrangement
13 in excess of the amount of compensation paid for such hours of nursing
14 care service had they been paid at the average hourly wage, including
15 related taxes and benefits, for in-house nursing care staff of like
16 classification at the same nursing facility, as reported in the most
17 recent cost report period.

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

21 (3) Utilizing regression or other statistical technique, the
22 department shall determine a reasonable limit on facility nursing staff
23 taking into account facility patient characteristics. For purposes of
24 this section, facility nursing staff refers to registered nurses,
25 licensed practical nurses and nursing assistants employed by the
26 facility or obtained through temporary labor contract arrangements.
27 Effective January 1, 1988, the hours associated with the training of
28 nursing assistants and the supervision of that training for nursing
29 assistants shall not be included in the calculation of facility nursing
30 staff. In selecting a measure of patient characteristics, the
31 department shall take into account:

32 (a) The correlation between alternative measures and facility
33 nursing staff; and

34 (b) The cost of collecting information for and computation of a
35 measure.

36 If regression is used, the limit shall be set at predicted nursing
37 staff plus 1.75 regression standard errors. If another statistical
38 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 chose [choose] to continue to receive its~~
7 ~~June, 1983 nursing services rate plus any adjustments in rates, such as~~
8 ~~adjustments for economic trends, made available to all facilities)).~~
9 However, nursing staff levels established under subsection (3) of this
10 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. (~~The reasonableness limit~~
15 ~~established pursuant to this subsection shall remain in effect for the~~
16 ~~period July 1, 1983 through June 30, 1985. At that time the department~~
17 ~~may revise the measure of patient characteristics or method used to~~
18 ~~establish the limit.))~~

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

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

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

34 (b) ~~If the percentage cost increase for a facility exceeds the~~
35 ~~increase in the selected index, the department shall limit the cost~~
36 ~~used for setting the facility's rate in the nursing services cost area~~
37 ~~to a level reflecting the increase in the selected index.~~

38 (7) ~~If the facility's nursing staff level exceeds the~~
39 ~~reasonableness limit established in subsection (3) of this section, the~~

1 department shall determine the increase for all items included in the
2 nursing services cost center between the facility's most recent cost
3 reporting period and the next prior cost reporting period.

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

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

18 (8) Prospective rates for the nursing services cost center, for
19 state fiscal year 1992 only, shall not be subject to the cost growth
20 index lid in subsections (5), (6), and (7) of this section. The lid
21 shall apply for state fiscal year 1991 rate setting and all state
22 fiscal years subsequent to fiscal year 1992.) The department shall
23 divide into two peer groups nursing facilities located in the state of
24 Washington providing services to medicaid residents: (a) Those
25 facilities located within a metropolitan statistical area (MSA) as
26 defined and determined by the United States office of management and
27 budget (OMB) and (b) those not located in such an area. The department
28 shall then calculate the percentage cost growth in nursing services for
29 each facility on a per patient day basis between particular report
30 periods specified in subsection (6) of this section. The individual
31 facility costs compared shall be raw reported to raw reported from the
32 selected report periods. All cost data from the selected periods shall
33 be included, regardless of the length of individual facility periods.
34 The facilities in each peer group shall then be arrayed from lowest to
35 highest by magnitude of reported to reported nursing services cost
36 growth between the selected periods and the percentage growth at the
37 median or fiftieth percentile of each group shall be determined.

38 (6) For July 1, 1993, prospective rate setting, the department
39 shall utilize for each peer group its raw reported median percentage

1 nursing services cost growth from 1990 to 1991. Thereafter, the
2 department shall utilize, for each of the two July 1 prospective rate
3 settings occurring in each state fiscal budget-setting biennium, each
4 peer group's median percentage reported nursing services cost growth
5 between the two calendar report years terminating thirty months and
6 eighteen months prior to the start of each biennium. Thus, for July 1,
7 1993, and July 1, 1994, prospective rate setting, the department shall
8 utilize for each peer group of facilities its median adjusted nursing
9 services cost growth from 1990 to 1991; for July 1, 1995, and July 1,
10 1996, rate setting, the department shall utilize for each peer group
11 its median growth from 1992 to 1993; for July 1, 1997, and July 1,
12 1998, rate setting, the department shall utilize for each peer group
13 its median growth from 1994 to 1995, and so forth for all future rate
14 setting.

15 (7) Beginning July 1, 1993, a facility's July 1 prospective nursing
16 services rate shall be set according to the following procedures:

17 (a) Reported nursing services costs from the most recent report
18 period will be desk reviewed and costs determined at the outset to be
19 unallowable, including excess costs associated with purchased nursing
20 services as authorized by subsection (1) of this section and costs
21 associated with excess nursing staff hours as authorized and determined
22 under subsections (3) and (4) of this section, will be removed. The
23 remaining cost shall then be divided by allowable, adjusted patient
24 days from the same report period to arrive at an initial per patient
25 day nursing services cost.

26 (b) Allowable nursing services costs from the report period
27 immediately preceding the most recent period (the "next prior" cost
28 report period), reflecting all historical desk-review and field audit
29 adjustments regardless of whether such adjustments are or are not the
30 subject of pending administrative or judicial review, will be divided
31 by patient days from the next prior period, reflecting all historical
32 desk-review and field audit adjustments to them regardless of whether
33 such adjustments are the subject of pending administrative or judicial
34 review, to arrive at an allowable per patient day nursing services cost
35 from the next prior period. This next prior period per patient day
36 cost will then be inflated by the applicable nursing services median
37 cost growth for that facility's peer group as determined by subsections
38 (5) and (6) of this section to arrive at the facility's particular
39 nursing services cost growth limit for July 1 prospective rate setting.

1 (c) Per patient day nursing services costs from the most recent
2 report period remaining after the initial review indicated in (a) of
3 this subsection that are in excess of the peer group median inflated
4 "next prior" period per patient day costs as indicated in (b) of this
5 subsection shall also be adjusted out. The facility's peer group
6 median cost growth limit shall not be applied if the facility's next
7 prior cost report contains less than six months of cost report data.

8 (d) The costs remaining after (c) of this subsection will be
9 adjusted for economic trends and conditions as authorized by RCW
10 74.46.420 and the resulting per patient day figure shall be the July 1
11 nursing services prospective rate.

12 (8) Rates calculated on the basis of the most recent adjustment
13 information available to the department prior to the July 1
14 commencement of the new rate, regardless of whether the adjustments are
15 subject to pending administrative or judicial review, shall not be
16 adjusted to reflect future administrative or judicial rulings, whether
17 final or not. Only the particular rate under review shall be affected
18 by future rulings, if required to be amended, and the department shall
19 not recalculate a nursing facility's succeeding rate(s) based upon any
20 new adjusted cost information.

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

33 (10) The department shall establish a method for identifying
34 patients with exceptional care requirements and a method for
35 establishing or negotiating on a consistent basis rates for such
36 patients.

37 (11) The department, in consultation with interested parties, shall
38 adopt rules to establish the criteria the department will use in
39 reviewing any requests by a contractor for a prospective rate

1 adjustment to be used to increase the number of nursing staff. These
2 rules shall also specify the time period for submission and review of
3 staffing requests: PROVIDED, That a decision on a staffing request
4 shall not take longer than sixty days from the date the department
5 receives such a complete request. In establishing the criteria, the
6 department may consider, but is not limited to, the following:

- 7 (a) Increases in ((acuity)) debility levels of contractors'
8 residents determined in accordance with the department's assessment and
9 reporting procedures and requirements utilizing the minimum data set;
10 (b) Staffing patterns for similar facilities;
11 (c) Physical plant of contractor; and
12 (d) Survey, inspection of care, and department consultation
13 results.

14 **Sec. 11.** RCW 74.46.490 and 1983 1st ex.s. c 67 s 25 are each
15 amended to read as follows:

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

19 ~~(2) ((Reimbursement for the food cost center shall be at the~~
20 ~~January 1, 1983, reimbursement rate, adjusted annually for inflation.))~~
21 The department shall utilize the same two peer groups of medicaid
22 nursing facilities required to be used in calculating the nursing
23 services cost growth limit and shall calculate the fiftieth percentile
24 or median growth in raw reported food costs for each peer group
25 utilizing the same general procedures set forth in RCW 74.46.481 (5)
26 and (6).

27 (3) For July 1, 1993, prospective rate setting, the department
28 shall utilize for each peer group its median percentage reported food
29 cost growth from 1990 to 1991. Thereafter, the department shall
30 utilize, for each of the two July 1 prospective rate settings occurring
31 in each state fiscal budget-setting biennium, each peer group's median
32 percentage reported food cost growth between the two calendar report
33 years terminating thirty months and eighteen months prior to the start
34 of each biennium.

35 (4) Beginning July 1, 1993, a facility's July 1 prospective food
36 rate shall be set according to the following procedures:

37 (a) Reported food costs from the most recent report period will be
38 desk reviewed and costs determined at the outset to be unallowable will

1 be removed. The remaining cost shall then be divided by allowable,
2 adjusted patient days from the same report period to arrive at an
3 initial per patient day food cost.

4 (b) Allowable food costs from the report period immediately
5 preceding the most recent period (the "next prior" cost report period),
6 reflecting all desk review and field audit adjustments regardless of
7 whether such adjustments are or are not the subject of pending
8 administrative or judicial review, will be divided by allowable patient
9 days from the next prior period, reflecting all desk review and field
10 audit adjustments to them regardless of whether such adjustments are or
11 are not the subject of pending administrative or judicial review, to
12 arrive at an allowable per patient day food cost from the next prior
13 period. This next prior period per patient day cost will then be
14 inflated by the applicable reported food cost median growth for that
15 facility's peer group.

16 (c) Per patient day food costs from the most recent report period
17 remaining after the initial desk review indicated in (a) of this
18 subsection which are in excess of the median inflated "next prior"
19 period per patient day costs as indicated in (b) of this subsection
20 shall also be adjusted out. The facility's peer group median cost
21 growth limit shall not be applied if the facility's next prior cost
22 report contains less than six months of cost report data.

23 (d) The costs remaining after (c) of this subsection will be
24 adjusted for economic trends and conditions as authorized by RCW
25 74.46.420 and the resulting per patient day figure shall be the July 1
26 food prospective rate.

27 (5) Rates calculated on the basis of the most recent adjustment
28 information available to the department prior to the July 1
29 commencement of the new rate, regardless of whether the adjustments are
30 subject to pending administrative or judicial review, shall not be
31 adjusted to reflect future administrative or judicial rulings, whether
32 final or not. Only the particular rate under review shall be affected
33 by future rulings, if required to be amended, and the department shall
34 not recalculate a nursing facility's succeeding rate(s) based upon any
35 new adjusted cost information.

36 **Sec. 12.** RCW 74.46.500 and 1992 c 182 s 1 are each amended to read
37 as follows:

1 (1) ~~The ((administration and operations)) administrative cost~~
2 center shall include ~~((all items not included in the cost centers of~~
3 ~~nursing services, food, and property.~~

4 ~~(2) Subject to subsection (4) of this section, the administration~~
5 ~~and operations cost center reimbursement rate for each facility shall~~
6 ~~be based on the computation in this subsection and shall not exceed the~~
7 ~~eighty-fifth percentile of (a) the rates of all reporting facilities~~
8 ~~derived from the computation below, or (b) reporting facilities grouped~~
9 ~~in accordance with subsection (3) of this section:~~

10 ~~AR = TAC/TPD, where~~

11 ~~AR = the administration and operations cost center reimbursement~~
12 ~~rate for a facility;~~

13 ~~TAC = the total costs of the administration and operations cost~~
14 ~~center plus the retained savings from such cost center as~~
15 ~~provided in RCW 74.46.180 of a facility; and~~

16 ~~TPD = the total patient days for a facility for the prior year.~~

17 ~~(3) The secretary may group facilities based on factors which could~~
18 ~~reasonably influence cost requirements of this cost center, other than~~
19 ~~ownership or legal organization characteristics.~~

20 ~~(4) In applying the eighty-fifth percentile reimbursement limit~~
21 ~~authorized by subsection (2) of this section to the pilot facility~~
22 ~~specially designed to meet the needs of persons living with AIDS as~~
23 ~~defined by RCW 70.24.017, and specifically authorized for this purpose~~
24 ~~under the 1989 amendment to the Washington state health plan, the~~
25 ~~department shall exempt the cost of nursing supplies reported by the~~
26 ~~pilot facility in excess of the average of nursing supplies cost for~~
27 ~~medicaid nursing facilities state-wide)) for cost reporting purposes~~
28 ~~all administrative, oversight, and management costs whether facility~~
29 ~~on-site or allocated in accordance with a department-approved joint-~~
30 ~~cost allocation methodology. Such costs shall be identical to the cost~~
31 ~~report line item costs categorized under "administration" in the~~
32 ~~"administration and operations" combined cost center existing prior to~~
33 ~~July 1, 1993, except for direct care supplies.~~

34 ~~(2) The department shall utilize the same two peer groups of~~
35 ~~medicaid nursing facilities required to be used in calculating the~~
36 ~~nursing services cost growth limit and shall calculate the fiftieth~~
37 ~~percentile or median growth in raw reported administrative costs for~~

1 each peer group utilizing the same general procedures set forth in RCW
2 74.46.481 (5) and (6).

3 (3) For July 1, 1993, prospective rate setting, the department
4 shall utilize for each peer group its median percentage reported
5 administrative cost growth from 1990 to 1991. Thereafter, the
6 department shall utilize, for each of the two July 1 prospective rate
7 settings occurring in each state fiscal budget-setting biennium, each
8 peer group's median percentage reported administrative cost growth
9 between the two calendar report years terminating thirty months and
10 eighteen months prior to the start of each biennium.

11 (4) Beginning July 1, 1993, a facility's July 1 prospective
12 administrative rate shall be set according to the following procedures:

13 (a) Reported administrative costs from the most recent report
14 period will be desk reviewed and costs determined at the outset to be
15 unallowable will be removed. The remaining cost shall then be divided
16 by allowable, adjusted patient days from the same report period to
17 arrive at an initial per patient day administrative cost.

18 (b) Allowable administrative costs from the report period
19 immediately preceding the most recent period (the "next prior" cost
20 report period), reflecting all desk review and field audit adjustments
21 regardless of whether such adjustments are or are not the subject of
22 pending administrative or judicial review, will be divided by allowable
23 patient days from the next prior period, reflecting all desk review and
24 field audit adjustments to them regardless of whether such adjustments
25 are or are not the subject of pending administrative or judicial
26 review, to arrive at an allowable per patient day administrative cost
27 from the next prior period. This next prior period per patient day
28 cost will then be inflated by the applicable reported administrative
29 cost median growth for that facility's peer group.

30 (c) Per patient day, administrative costs from the most recent
31 report period remaining after the initial desk review indicated in (a)
32 of this subsection which are in excess of the median inflated "next
33 prior" period per patient day costs as indicated by (b) of this
34 subsection shall also be adjusted out. The facility's peer group
35 median cost growth limit shall not be applied if the facility's next
36 prior cost report contains less than six months of cost report data.

37 (d) The per patient day costs remaining after (c) of this
38 subsection will be adjusted for economic trends and conditions as
39 authorized by RCW 74.46.420.

1 (e) The resulting per patient day figures for all facilities in
2 each peer group will be arrayed from lowest to highest and the fiftieth
3 percentile or median figure for each peer group will be determined.

4 (f) The nursing facility's July 1 administrative prospective rate
5 shall be the lesser of: (i) The per patient day figure resulting after
6 (d) of this subsection or (ii) one hundred ten percent of the median
7 administrative per patient day figure of its peer group which shall
8 constitute the administrative prospective rate ceiling for all
9 facilities in the peer group.

10 (5) Rates calculated on the basis of the most recent adjustment
11 information available to the department prior to the July 1
12 commencement of the new rate, regardless of whether the adjustments are
13 subject to pending administrative or judicial review, shall not be
14 adjusted to reflect future administrative or judicial rulings, whether
15 final or not. Only the particular rate under review shall be affected
16 by future rulings, if required to be amended, and the department shall
17 not recalculate a nursing facility's succeeding rate(s) based upon any
18 new adjusted cost information.

19 NEW SECTION. Sec. 13. A new section is added to chapter 74.46 RCW
20 to read as follows:

21 (1) The operational cost center shall include for cost reporting
22 purposes all costs of the daily operation of the facility not included
23 in nursing services and related care, food, administrative, or property
24 costs, whether such costs are facility on-site or allocated in
25 accordance with a department-approved joint-cost allocation
26 methodology. Such costs shall be identical to all cost report line
27 item costs categorized under "operations" in the combined
28 "administration and operations" cost center existing prior to July 1,
29 1992.

30 (2) The department shall utilize the same two peer groups of
31 medicaid nursing facilities required to be used in calculating the
32 nursing services cost growth limit and shall calculate the fiftieth
33 percentile or median growth in raw reported operational costs for each
34 peer group utilizing the same general procedures set forth in RCW
35 74.46.481 (5) and (6).

36 (3) For July 1, 1993, prospective rate setting, the department
37 shall utilize for each peer group its median percentage reported
38 operational cost growth from 1990 to 1991. Thereafter, the department

1 shall utilize, for each of the two July 1 prospective rate settings
2 occurring in each state fiscal budget-setting biennium, each peer
3 group's median percentage reported operational cost growth between the
4 two calendar report years terminating thirty months and eighteen months
5 prior to the start of each biennium.

6 (4) Beginning July 1, 1993, a facility's July 1 prospective
7 operational rate shall be set according to the following procedures:

8 (a) Reported operational costs from the most recent report period
9 will be desk reviewed and costs determined at the outset to be
10 unallowable will be removed. The remaining cost shall then be divided
11 by allowable, adjusted patient days from the same report period to
12 arrive at an initial per patient day operational cost.

13 (b) Allowable operational costs from the report period immediately
14 preceding the most recent period (the "next prior" cost report period),
15 reflecting all desk review and field audit adjustments regardless of
16 whether such adjustments are or are not the subject of pending
17 administrative or judicial review, will be divided by patient days from
18 the next prior period, reflecting all desk review and field audit
19 adjustments to them regardless of whether such adjustments are the
20 subject of pending administrative or judicial review, to arrive at an
21 allowable per patient day operational cost from the next prior period.
22 This prior period per patient day cost will then be inflated by the
23 applicable reported operational cost median growth for that facility's
24 peer group.

25 (c) Per patient day operational costs from the most recent report
26 period remaining after the initial desk review indicated in (a) of this
27 subsection which are in excess of the median inflated "next prior"
28 period per patient day costs as indicated in (b) of this subsection
29 shall also be adjusted out. The facility's peer group median cost
30 growth limit shall not be applied if the facility's next prior cost
31 report contains less than six months of cost report data.

32 (d) The per patient day costs remaining after (c) of this
33 subsection will be adjusted for economic trends and conditions as
34 authorized by RCW 74.46.420.

35 (e) The resulting per patient day figures for all facilities in
36 each peer group will be arrayed from lowest to highest and the fiftieth
37 percentile or median figure for each group will be determined.

38 (f) The nursing facility's July 1 operational prospective rate
39 shall be the lesser of: (i) The per patient day figure resulting after

1 (d) of this subsection or (ii) one hundred twenty-five percent of the
2 median operational per patient day figure of its peer group which shall
3 constitute the operational prospective rate ceiling for all facilities
4 in the peer group.

5 (5) Rates calculated on the basis of the most recent adjustment
6 information available to the department prior to the July 1
7 commencement of the new rate, regardless of whether the adjustments are
8 subject to pending administrative or judicial review, shall not be
9 adjusted to reflect future administrative or judicial rulings, whether
10 final or not. Only the particular rate under review shall be affected
11 by future rulings, if required to be amended, and the department shall
12 not recalculate a nursing facility's succeeding rate(s) based upon any
13 new adjusted cost information.

14 **Sec. 14.** RCW 74.46.530 and 1991 sp.s. c 8 s 17 are each amended to
15 read as follows:

16 (1) The department shall establish for ~~((individual facilities))~~
17 each medicaid nursing facility a return on investment ((allowances
18 composed of two parts: A financing allowance and a variable return
19 allowance)) prospective rate component as part of the facility's total
20 reimbursement, including profit potential, for services rendered to
21 medicaid residents.

22 ~~((a))~~ (2) The ~~((financing allowance))~~ return on investment
23 medicaid reimbursement rate component shall be determined by
24 multiplying the net invested funds of each facility by .10, and
25 dividing by the contractor's ~~((total))~~ allowable patient days from the
26 most recent cost report period. If a capitalized addition or
27 retirement of an asset will result in a different licensed bed capacity
28 during the ensuing period, the prior period total patient days used in
29 computing the ~~((financing and variable return allowances))~~ return on
30 investment rate shall be adjusted to the anticipated patient day level.

31 ~~((b))~~ (3) In computing the portion of net invested funds
32 representing the net book value of tangible fixed assets, the same
33 assets, depreciation bases, lives, and methods referred to in RCW
34 74.46.330, 74.46.350, 74.46.360, 74.46.370, and 74.46.380, including
35 owned and leased assets, shall be utilized, except that the capitalized
36 cost of land upon which the facility is located and such other
37 contiguous land which is reasonable and necessary for use in the
38 regular course of providing patient care shall also be included.

1 Subject to provisions and limitations contained in this chapter, for
2 land purchased by owners or lessors before July 18, 1984, capitalized
3 cost of land shall be the buyer's capitalized cost. For all partial or
4 whole rate periods after July 17, 1984, if the land is purchased after
5 July 17, 1984, capitalized cost shall be that of the owner of record on
6 July 17, 1984, or buyer's capitalized cost, whichever is lower. In the
7 case of leased facilities where the net invested funds are unknown or
8 the contractor is unable to provide necessary information to determine
9 net invested funds, the secretary shall have the authority to determine
10 an amount for net invested funds based on an appraisal conducted
11 according to RCW 74.46.360(1).

12 ~~((c) In determining the variable return allowance:~~

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

17 ~~(ii) The department shall then compute the variable return~~
18 ~~allowance by multiplying the appropriate percentage amounts, which~~
19 ~~shall not be less than one percent and not greater than four percent,~~
20 ~~by the total prospective rate for each facility, as determined in RCW~~
21 ~~74.46.450 through 74.46.510. The percentage amounts will be based on~~
22 ~~groupings of facilities according to the rankings as established in (i)~~
23 ~~of this subsection (1)(c). Those groups of facilities with lower per~~
24 ~~diem costs shall receive higher percentage amounts than those with~~
25 ~~higher per diem costs.~~

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

30 ~~(e))~~ (4) In the case of a facility which was leased by the
31 contractor as of January 1, 1980, in an arm's-length agreement, which
32 continues to be leased under the same lease agreement, and for which
33 the annualized lease payment, plus any interest and depreciation
34 expenses associated with contractor-owned assets, for the period
35 covered by the prospective rates, divided by the contractor's total
36 patient days, minus the property cost center determined according to
37 RCW 74.46.510, is more than the return on investment ~~((allowance))~~ rate
38 determined according to subsections ~~((1)(d))~~ (2) and (3) of this
39 section, the following shall apply:

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

10 ~~((ii))~~ (b) The ~~((sum of the financing allowance))~~ return on
11 investment rate computed under subsections ~~((1)(e)(i))~~ (2) and (3) of
12 this section ~~((and the variable allowance))~~ shall be compared to the
13 annualized lease payment, plus any interest and depreciation
14 ~~((expenses))~~ associated with contractor-owned assets, for the period
15 covered by the prospective rates, divided by the contractor's total
16 patient days, minus the property cost center rate determined according
17 to RCW 74.46.510. The lesser of the two amounts shall be called the
18 alternate return on investment ~~((allowance))~~ rate.

19 ~~((iii))~~ (c) The return on investment ~~((allowance))~~ rate
20 determined according to subsections ~~((1)(d))~~ (2) and (3) of this
21 section or the alternate return on investment ~~((allowance))~~ rate,
22 whichever is greater, shall be the return on investment ~~((allowance))~~
23 rate for the facility ~~((and shall be added to the prospective rates of~~
24 ~~the contractor as determined in RCW 74.46.450 through 74.46.510))~~.

25 ~~((f))~~ (5) In the case of a facility which was leased by the
26 contractor as of January 1, 1980, in an arm's-length agreement, if the
27 lease is renewed or extended pursuant to a provision of the lease, the
28 treatment provided in subsection ~~((1)(e))~~ (4) of this section shall
29 be applied except that in the case of renewals or extensions made
30 subsequent to April 1, 1985, reimbursement for the annualized lease
31 payment shall be no greater than the reimbursement for the annualized
32 lease payment for the last year prior to the renewal or extension of
33 the lease.

34 ~~((2))~~ (6) In the event that the department of health and human
35 services disallows the application of the return on investment
36 ~~((allowances))~~ to nonprofit facilities, the department shall modify the
37 measurements of net invested funds used for computing individual
38 facility return on investment ~~((allowances))~~ rates as follows: Net
39 invested funds for each nonprofit facility shall be multiplied by one

1 minus the ratio of equity funds to the net invested funds of all
2 nonprofit facilities.

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

10 NEW SECTION. Sec. 15. RCW 74.46.495 and 1983 1st ex.s. c 67 s 26
11 are each repealed.

12 NEW SECTION. Sec. 16. This act is necessary for the immediate
13 preservation of the public peace, health, or safety, or support of the
14 state government and its existing public institutions, and shall take
15 effect July 1, 1993.

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