

Within the limitations of board policy, a school district's chief administrator may purchase instructional materials to meet deviant needs or rapidly changing circumstances.

(2) Establish a depreciation scale for determining the value of texts which students wish to purchase.

Passed the House April 19, 1989.

Passed the Senate April 13, 1989.

Approved by the Governor May 12, 1989.

Filed in Office of Secretary of State May 12, 1989.

CHAPTER 372

[Substitute House Bill No. 1864]

NURSING HOMES—QUALITY OF CARE IMPROVEMENT

AN ACT Relating to quality of care in nursing homes; amending RCW 18.51.050, 74.46.410, 18.51.430, 18.51.500, 74.42.240, 74.42.380, 18.51.054, 18.51.060, 18.51.065, 18.51.410, 18.51.440, 18.51.460, 74.42.580, 74.09.120, 74.46.440, and 74.46.020; reenacting and amending RCW 74.46.360; creating a new section; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 6, chapter 117, Laws of 1951 as last amended by section 4, chapter 284, Laws of 1985 and RCW 18.51.050 are each amended to read as follows:

Upon receipt of an application for license, the department shall issue a license if the applicant and the nursing home facilities meet the requirements established under this chapter, except that the department shall issue a temporary license to a court-appointed receiver for a period not to exceed six months from the date of appointment. Prior to the issuance or renewal of the license, the licensee shall pay a license fee as established by the department. No fee shall be required of government operated institutions or court-appointed receivers. All licenses issued under the provisions of this chapter shall expire on a date to be set by the department, but no license issued pursuant to this chapter shall exceed thirty-six months in duration. When a change of ownership occurs, the entity becoming the licensed operating entity of the facility shall pay a fee established by the department at the time of application for the license. The previously determined date of license expiration shall not change. The department shall conduct, without charge to the nursing homes, one annual licensing and certification survey per calendar year and one postsurvey visit.

For all additional surveys required beyond the first postsurvey visit, nursing homes shall pay an inspection fee of twelve dollars per bed to the department. The inspection fee shall be due within thirty days of the completion date of the postsurvey.

All applications and fees for renewal of the license shall be submitted to the department not later than thirty days prior to the date of expiration of the license. All applications and fees for change of ownership licenses shall be submitted to the department not later than sixty days before the date of the proposed change of ownership. Each license shall be issued only to the operating entity and those persons named in the license application. The license is valid only for the operation of the facility at the location specified in the license application. Licenses are not transferable or assignable. Licenses shall be posted in a conspicuous place on the licensed premises.

Sec. 2. Section 41, chapter 177, Laws of 1980 as last amended by section 3, chapter 175, Laws of 1986 and RCW 74.46.410 are each amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

(k) Charity and courtesy allowances;

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

(m) Vending machine expenses;

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

(o) Funeral and burial expenses;

(p) Costs of gift shop operations and inventory;

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

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

(s) Penalties and fines;

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

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

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

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

(x) Expenses of profit-sharing plans;

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

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

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

(bb) Costs related to agreements not to compete;

(cc) Amortization of goodwill;

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

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

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

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

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

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

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

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

Sec. 3. Section 12, chapter 476, Laws of 1987 and RCW 18.51.430 are each amended to read as follows:

A petition for receivership shall include the name of the candidate for receiver. The department shall maintain a list of qualified persons to act as receivers, however, no person may be considered to be qualified to be a receiver who:

(1) Is the owner, licensee, or administrator of the facility;

(2) Is affiliated with the facility;

(3) Has a financial interest in the facility at the time the receiver is appointed; or

(4) Has owned or operated a nursing home that has been ordered into receivership.

If a receiver is appointed, he or she may be drawn from the list but need not be, but an appointee shall have experience in providing long-term

health care and a history of satisfactory operation of a nursing home. Preference may be granted to persons expressing an interest in permanent operation of the facility.

Sec. 4. Section 19, chapter 476, Laws of 1987 and RCW 18.51.500 are each amended to read as follows:

Upon order of the court, the department shall provide emergency or transitional financial assistance to a receiver not to exceed thirty thousand dollars. The receiver shall file with the court an accounting for any money expended. Any emergency or transitional expenditure made by the department on behalf of a nursing home not certified to participate in the Medicaid Title XIX program shall be recovered from revenue generated by the facility which revenue is not obligated to the operation of the facility. (~~If such funds are not fully recovered at the termination of the receivership,;~~) An action to recover such sums may be filed by the department against the former licensee or owner at the time the expenditure is made, regardless of whether the facility is certified to participate in the Medicaid Title XIX program or not.

In lieu of filing an action, the department may file a lien on the facility or on the proceeds of the sale of the facility. Such a lien shall take priority over all other liens except for liens for wages to employees. The owner of the facility shall be entitled to the proceeds of the facility or the sale of the facility to the extent that these exceed the liabilities of the facility, including liabilities to the state, receiver, employees, and contractors, at the termination of the receivership.

Revenues relating to services provided by the current or former licensee, operator, or owner and available operating funds belonging to such licensee, operator, or owner shall be under the control of the receiver. The receiver shall consult the court in cases of extraordinary or questionable debts incurred prior to his or her appointment and shall not have the power to close the home or sell any assets of the home without prior court approval.

Priority shall be given to debts and expenditures directly related to providing care and meeting the needs of patients. Any payment made to the receiver shall discharge the obligation of the payor to the owner of the facility.

Sec. 5. Section 24, chapter 211, Laws of 1979 ex. sess. and RCW 74.42.240 are each amended to read as follows:

(1) No staff member may administer any medication to a resident unless the staff member is licensed to administer medication: PROVIDED, That nothing herein shall be construed as prohibiting graduate nurses or student nurses from administering medications when permitted to do so under chapter 18.88 or 18.78 RCW and rules adopted thereunder.

(2) The facility may only allow a resident to give himself or herself medication with the attending physician's permission.

(3) Medication shall only be administered to or used by the resident for whom it is ordered.

Sec. 6. Section 38, chapter 211, Laws of 1979 ex. sess. as amended by section 2, chapter 284, Laws of 1985 and RCW 74.42.380 are each amended to read as follows:

(1) The facility shall have a director of nursing services. The director of nursing services shall be a registered nurse.

(2) The director of nursing services is responsible for:

(a) Coordinating the plan of care for each resident;

(b) Permitting only licensed personnel to administer medications: PROVIDED, That nothing herein shall be construed as prohibiting graduate nurses (~~(; and student nurses under the supervision of their clinical instructor;)~~) or student nurses from administering medications when permitted to do so under chapter 18.88 or 18.78 RCW and rules promulgated pursuant thereto: PROVIDED FURTHER, That nothing herein shall be construed as prohibiting persons certified under chapter 18.135 RCW from practicing pursuant to the delegation and supervision requirements of chapter 18.135 RCW and rules promulgated pursuant thereto; and

(c) Insuring that the licensed practical nurses comply with chapter 18.78 RCW, the registered nurses comply with chapter 18.88 RCW, and persons certified under chapter 18.135 RCW comply with the provisions of that chapter and rules promulgated pursuant thereto.

Sec. 7. Section 1, chapter 284, Laws of 1985 and RCW 18.51.054 are each amended to read as follows:

The department may deny a license to any applicant (~~(who)~~) if the department finds that the applicant or any partner, officer, director, managerial employee, or owner of five percent or more of the applicant:

(1) Operated a nursing home without a license or under a revoked or suspended license; or

(2) Knowingly or with reason to know made a false statement of a material fact (a) in an application for license or any data attached thereto, or (b) in any matter under investigation by the department; or

(3) Refused to allow representatives or agents of the department to inspect (a) all books, records, and files required to be maintained or (b) any portion of the premises of the nursing home; or

(4) Willfully prevented, interfered with, or attempted to impede in any way (a) the work of any authorized representative of the department or (b) the lawful enforcement of any provision of this chapter or chapter 74.42 RCW; or

(5) Has a history of significant noncompliance with federal or state regulations in providing nursing home care. In deciding whether to deny a license under this section, the factors the department considers shall include the gravity and frequency of the noncompliance.

Sec. 8. Section 7, chapter 117, Laws of 1951 as last amended by section 23, chapter 476, Laws of 1987 and RCW 18.51.060 are each amended to read as follows:

(1) ~~((The department is authorized to deny, suspend, or revoke a license or, in lieu thereof or in addition thereto, assess monetary penalties of a civil nature not to exceed three thousand dollars per violation))~~ In any case in which ~~((it))~~ the department finds that ~~((the applicant, or))~~ a licensee, or any partner, officer, director, owner of five percent or more of the assets of the nursing home, or managing employee~~((:~~

~~((a)))~~ failed or refused to comply with the requirements of this chapter or of chapter 74.42 RCW, or the standards, rules and regulations established under them~~((:))~~ or, in the case of a Medicaid contractor, failed or refused to comply with the Medicaid requirements of Title XIX of the social security act, as amended, and regulations promulgated thereunder, the department may take any or all of the following actions:

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

(b) Order stop placement;

(c) Assess monetary penalties of a civil nature;

(d) Deny payment to a nursing home for any Medicaid resident admitted after notice to deny payment. Residents who are Medicaid recipients shall not be responsible for payment when the department takes action under this subsection;

(e) Appoint temporary management as provided in subsection (7) of this section.

(2) The department may suspend, revoke, or refuse to renew a license, assess monetary penalties of a civil nature, or both, in any case in which it finds that the licensee, or any partner, officer, director, owner of five percent or more of the assets of the nursing home, or managing employee:

~~((b)))~~ (a) Operated a nursing home without a license or under a revoked or suspended license; or

~~((c) Has))~~ (b) Knowingly or with reason to know made a false statement of a material fact in his application for license or any data attached thereto, or in any matter under investigation by the department; or

~~((d)))~~ (c) Refused to allow representatives or agents of the department to inspect all books, records, and files required to be maintained or any portion of the premises of the nursing home; or

~~((e)))~~ (d) Willfully prevented, interfered with, or attempted to impede in any way the work of any duly authorized representative of the department and the lawful enforcement of any provision of this chapter or of chapter 74.42 RCW; or

~~((f)))~~ (e) Willfully prevented or interfered with any representative of the department in the preservation of evidence of any violation of any of the provisions of this chapter or of chapter 74.42 RCW or the standards, rules, and regulations adopted under them; or

~~((g))~~ (f) Failed to report patient abuse or neglect in violation of chapter 70.124 RCW; or

~~((h))~~ (g) Fails to pay any civil monetary penalty assessed by the department pursuant to this chapter within ten days after such assessment becomes final ~~(: PROVIDED, That in no event shall the department assess a civil monetary penalty authorized pursuant to this section or post the said premises as provided in RCW 18.51.260 or include in the report required pursuant to RCW 18.51.270 during any period in which it has not reasonably implemented and funded its cost-related reimbursement system for public patients:~~

~~(2) A contractor subject to civil penalty under subsection (1)(a) of this section shall have a reasonable opportunity, not to exceed sixty days from notification of the violation, to correct the violation before being assessed a civil monetary penalty under this section. However, if the department determines that the violation resulted in serious harm to or death of a patient, constitutes a serious threat to patient life, health, or safety, or substantially limits the nursing home's capacity to render adequate care, the violator shall be so notified and a penalty may be assessed without prior opportunity to correct. Each day the violation continues may constitute a separate violation subject to assessment of a separate penalty.~~

The correction of a standard or condition level deficiency, as defined by the authority of Title XVIII of the social security act and 42 C.F.R. 405.110 subpart K, shall be maintained for a period of at least one year. Failure to maintain such correction shall constitute a separate violation for each day the deficiency is not corrected and may be subject to the assessment of a separate penalty not to exceed three thousand dollars without a prior opportunity to correct the violation.

~~(3) A person subject to civil penalty under subsection (1)(b) through (h) of this section shall not have a prior opportunity to correct the violation before being assessed a civil monetary penalty under this section.~~

Following the notification of a violation of subsection (1)(b) through (h) of this section, each day upon which the same or a substantially similar action occurs shall constitute a separate violation subject to the assessment of a separate penalty.

~~(4) Any civil penalty assessed under this section or chapter 74.46 RCW shall bear a reasonable rate of interest from the date of notification of the violation. The department may administer civil fines under this section or chapter 74.46 RCW by:~~

~~(a) Requiring payment in full; or~~

~~(b) Permitting installment payments; or~~

~~(c) Requiring that the full amount or a portion of the assessed civil penalty be expended to ameliorate the violation or to improve nonadministrative services within the facility; or~~

~~(d) Defer the penalty or a portion thereof until one year after corrective action has been completed to assure maintenance of such action. PROVIDED, That the penalty may be reduced all or in part at the end of such year. PROVIDED FURTHER, That the penalty may be trebled if such corrective action is not maintained for one year).~~

~~((5)) (3) The department shall deny payment to a nursing home having a Medicaid contract with respect to any Medicaid-eligible individual admitted to the nursing home when:~~

~~(a) The department finds the nursing home not in compliance with the requirements of Title XIX of the social security act, as amended, and regulations promulgated thereunder, and the facility has not complied with such requirements within three months; in such case, the department shall deny payment until correction has been achieved; or~~

~~(b) The department finds on three consecutive standard surveys that the nursing home provided substandard quality of care; in such case, the department shall deny payment for new admissions until the facility has demonstrated to the satisfaction of the department that it is in compliance with Medicaid requirements and that it will remain in compliance with such requirements.~~

~~(4) (a) Civil penalties collected under this section or under chapter 74.42 RCW shall be deposited into a special fund administered by the department to be applied to the protection of the health or property of residents of nursing homes found to be deficient, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.~~

~~(b) Civil monetary penalties, if imposed, may be assessed and collected, with interest, for each day a nursing home is or was out of compliance. Civil monetary penalties shall not exceed three thousand dollars per violation. Each day upon which the same or a substantially similar action occurs is a separate violation subject to the assessment of a separate penalty.~~

~~(c) Any civil penalty assessed under this section or chapter 74.46 RCW shall be a nonreimbursable item under chapter 74.46 RCW.~~

~~(5)(a) The department shall order stop placement on a nursing home, effective upon oral or written notice, when the department determines:~~

~~(i) The nursing home no longer substantially meets the requirements of chapter 18.51 or 74.42 RCW, or in the case of medicaid contractors, the requirements of Title XIX of the social security act, as amended, and any regulations promulgated under such statutes; and~~

~~(ii) The deficiency or deficiencies in the nursing home:~~

~~(A) Jeopardize the health and safety of the residents, or~~

~~(B) Seriously limit the nursing home's capacity to provide adequate care.~~

(b) When the department has ordered a stop placement, the department may approve a readmission to the nursing home from a hospital when the department determines the readmission would be in the best interest of the individual seeking readmission.

(c) The department shall terminate the stop placement when:

(i) The provider states in writing that the deficiencies necessitating the stop placement action have been corrected; and

(ii) The department staff confirms in a timely fashion not to exceed fifteen working days that:

(A) The deficiencies necessitating stop placement action have been corrected, and

(B) The provider exhibits the capacity to maintain adequate care and service.

(d) A nursing home provider shall have the right to an informal review to present written evidence to refute the deficiencies cited as the basis for the stop placement. A request for an informal review must be made in writing within ten days of the effective date of the stop placement.

(e) A stop placement shall not be delayed or suspended because the nursing home requests a hearing pursuant to chapter 34.05 RCW or an informal review. The stop placement shall remain in effect until:

(i) The department terminates the stop placement; or

(ii) The stop placement is terminated by a final agency order, after a hearing, pursuant to chapter 34.05 RCW.

(6) If the department determines that an emergency exists as a result of a nursing home's failure or refusal to comply with requirements of this chapter or, in the case of a Medicaid contractor, its failure or refusal to comply with Medicaid requirements of Title XIX of the social security act, as amended, and rules adopted thereunder, the department may suspend the nursing home's license and order the immediate closure of the nursing home, the immediate transfer of residents, or both.

(7) If the department determines that the health or safety of residents is immediately jeopardized as a result of a nursing home's failure or refusal to comply with requirements of this chapter or, in the case of a Medicaid contractor, its failure or refusal to comply with Medicaid requirements of Title XIX of the social security act, as amended, and rules adopted thereunder, the department may appoint temporary management to:

(a) Oversee the operation of the facility; and

(b) Ensure the health and safety of the facilities residents while:

(i) Orderly closure of the facility occurs; or

(ii) The deficiencies necessitating temporary management are corrected.

(8) The department shall by rule specify criteria as to when and how the sanctions specified in this section shall be applied. Such criteria shall

provide for the imposition of incrementally more severe penalties for deficiencies that are repeated, uncorrected, pervasive, or present a threat to the health, safety, or welfare of the residents.

Sec. 9. Section 16, chapter 99, Laws of 1975 1st ex. sess. as amended by section 19, chapter 2, Laws of 1981 1st ex. sess. and RCW 18.51.065 are each amended to read as follows:

(1) All orders of the department denying, suspending, or revoking the license or assessing a monetary penalty shall become final twenty days after the same has been served upon the applicant or licensee unless a hearing is requested. All orders of the department imposing stop placement, temporary management, emergency closure, emergency transfer, or license suspension, shall be effective immediately upon notice. Orders of the department imposing denial of payment shall become final twenty days after the same has been served, unless a hearing is requested, except that such orders shall be effective immediately upon notice and pending any hearing when the department determines the deficiencies jeopardize the health and safety of the residents or seriously limit the nursing home's capacity to provide adequate care. All hearings hereunder and judicial review of such determinations shall be in accordance with the administrative procedure act, chapter ((34.04)) 34.05 RCW, except that all orders of the department imposing stop placement, temporary management, emergency closure, emergency transfer, or license suspension shall be effective pending any hearing, and except that chapter 34.05 RCW shall have no application to receivership, which is instituted by direct petition to superior court as provided for in RCW 18.51.410 through 18.51.520.

Sec. 10. Section 10, chapter 476, Laws of 1987 and RCW 18.51.410 are each amended to read as follows:

A petition to establish a receivership shall allege that one or more of the following conditions exist and that the current operator has demonstrated an inability or unwillingness to take actions necessary to immediately correct the conditions alleged:

- (1) The facility is operating without a license;
- (2) The facility has not given the department prior written notice of its intent to close and has not made arrangements within thirty days before closure for the orderly transfer of its residents: PROVIDED, That if the facility has given the department prior written notice but the department has not acted with all deliberate speed to transfer the facility's residents, this shall bar the filing of a petition under this ((section)) subsection;
- (3) ~~((An emergency exists that specifically demonstrates an immediate and serious threat of harm to))~~ The health, ((security)) safety, or welfare of the facility's residents((, including, but not limited to, abandonment of the facility by the owner)) is immediately jeopardized;

~~(4) ((A condition exists in the facility in violation of a licensing statute or regulation that specifically demonstrates an immediate and serious threat of harm to the health, safety, or welfare of the residents of the facility;~~

~~(5)) The facility demonstrates a pattern and practice of violating chapter 18.51 or 74.42 RCW ((, or other statutes or regulations adopted by the department designed to safeguard the health, security, or welfare of residents)) and rules adopted thereunder such that the facility has demonstrated a repeated inability to maintain minimum patient care standards; or~~

~~((6)) (5) The facility demonstrates a pattern or practice of violating a condition level as defined by the federal government under the authority of Title XIX of the social security act.~~

The department may file a petition in the superior court in the county in which the nursing home is located or in the superior court of Thurston county. The current or former operator or licensee and the owner of the nursing home, if different than the operator or licensee, shall be made a party to the action. The court shall grant the petition if it finds, by a preponderance of the evidence, that one or more of the conditions listed in subsections (1) through ~~((6))~~ (5) of this section exists and, subject to RCW 18.51.420, that the current operator is unable or unwilling to take actions necessary to immediately correct the conditions.

Sec. 11. Section 13, chapter 476, Laws of 1987 and RCW 18.51.440 are each amended to read as follows:

Upon receipt of a petition for receivership, the court shall hear the matter within fourteen days. Temporary relief may be obtained under chapter 7.40 RCW and other applicable laws. In all actions arising under RCW 18.51.410 through 18.51.530, the posting of a certified copy of the summons and petition in a conspicuous place in the nursing home shall constitute service of those documents upon the respondent.

~~((In considering the petition, the court shall consider the following factors, among others:~~

~~(1) The history of the provider, including any prior history of deficiencies and corrective action taken; and~~

~~(2) Whether the circumstances alleged in the petition occurred for reasons that were beyond the control of the facility's current or former operator, licensee, or owner.))~~

Sec. 12. Section 15, chapter 476, Laws of 1987 and RCW 18.51.460 are each amended to read as follows:

(1) The receivership shall terminate:

~~((1) At the end of the appointed term;~~

~~(2)) (a) When all deficiencies have been eliminated and the court determines that the facility has the management capability to ensure continued compliance with all requirements; or~~

(b) When all residents have been transferred and the facility closed((;

~~(3) When all deficiencies have been eliminated and the facility has been sold or returned to its former owner: PROVIDED, That when a rehabilitated facility is returned to its former owner, the court may impose conditions to assure the continued compliance with chapters 18.51 and 74.42 RCW, and other applicable laws and regulations; or~~

~~(4) Upon possession and control of the nursing home by a licensed replacement operator)).~~

(2) Upon the termination of a receivership, the court may impose conditions to assure the continued compliance with chapters 18.51 and 74.42 RCW, and, in the case of medicaid contractors, continued compliance with Title XIX of the social security act, as amended, and regulations promulgated thereunder.

Sec. 13. Section 58, chapter 211, Laws of 1979 ex. sess. as last amended by section 27, chapter 476, Laws of 1987 and RCW 74.42.580 are each amended to read as follows:

The department may deny, suspend, ~~((or))~~ revoke, or refuse to renew a license or provisional license ~~((or, in lieu thereof or in addition thereto)),~~ assess monetary penalties of a civil nature, deny payment, seek receivership, order stop placement, appoint temporary management, order emergency closure, or order emergency transfer as provided in RCW 18.51.054 and 18.51.060 for violations of requirements of this chapter or, in the case of medicaid contractors, the requirements of Title XIX of the social security act, as amended, or rules adopted thereunder. Chapter ~~((34.04))~~ 34.05 RCW shall apply to any such actions, except for receivership, and except that stop placement, appointment of temporary management, emergency closure, emergency transfer, and summary license suspension shall be effective pending any hearing, and except that denial of payment shall be effective pending any hearing when the department determines deficiencies jeopardize the health and safety of the residents or seriously limit the nursing home's capacity to provide adequate care.

Sec. 14. Section 36, chapter 177, Laws of 1980 as last amended by section 1, chapter 208, Laws of 1988 and by section 1, chapter 221, Laws of 1988 and RCW 74.46.360 are each reenacted and amended to read as follows:

(1) The depreciation base shall be the historical cost of the contractor or lessor, when the assets are leased by the contractor, in acquiring the asset in an arm's-length transaction and preparing it for use, less goodwill, and less accumulated depreciation which has been incurred during periods that the assets have been used in or as a facility by any contractor, such accumulated depreciation to be measured in accordance with subsections (2), (3), and (4) of this section and RCW ~~74.46.350 and 74.46.370~~. If the department challenges the historical cost of an asset, or if the contractor cannot or will not provide the historical costs, the department will have the

department of general administration, through an appraisal procedure, determine the fair market value of the assets at the time of purchase. The depreciation base of the assets will not exceed such fair market value.

(2) The historical cost of donated assets, or of assets received through testate or intestate distribution, shall be the lesser of:

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

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

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

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

(b) The provisions of (a) of this subsection shall not apply to the most recent arm's-length acquisition if it occurs at least ten years after the ownership of the assets has been previously transferred in an arm's-length transaction nor to the first arm's-length acquisition that occurs after January 1, 1980, for facilities participating in the medical care program prior to January 1, 1980. The new depreciation base for such acquisitions shall not exceed the fair market value of the assets as determined by the department of general administration through an appraisal procedure. A determination by the department of general administration of fair market value shall be final unless the procedure used to make such determination is shown to be arbitrary and capricious. This subsection is inoperative for any transfer of ownership of any asset occurring on or after July 18, 1984, leaving (a) of this subsection to apply alone to such transfers: **PROVIDED, HOWEVER,** That this subsection shall apply to transfers of ownership of assets occurring prior to January 1, 1985, if the costs of such assets have never been reimbursed under medicaid cost reimbursement on an owner-operated basis or as a related-party lease: **PROVIDED FURTHER,** That for any contractor that can document in writing an enforceable agreement for the purchase of a nursing home dated prior to (~~August 1~~) July 18, 1984, and submitted to the department prior to January 1, 1988, the depreciation base of the nursing home, for rates established after July 18, 1984, shall not exceed the fair market value of the assets at the date of purchase as determined by the department of general administration through an appraisal procedure. For medicaid cost reimbursement purposes, an agreement to purchase a nursing home dated prior to July 18, 1984, is enforceable, even though such agreement contains no legal description of the real property involved, notwithstanding the statute of frauds or any other provision of law.

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

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

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

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

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

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

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

(d) Where depreciable assets are acquired from a related organization, the contractor's depreciation base shall not exceed the base the related organization had or would have had under a contract with the department.

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

Sec. 15. Section 74.09.120, chapter 26, Laws of 1959 as last amended by section 44, chapter 67, Laws of 1983 1st ex. sess. and RCW 74.09.120 are each amended to read as follows:

The department shall purchase necessary physician and dentist services by contract or "fee for service." The department shall purchase hospital care by contract or by all inclusive day rate, or at a reasonable cost based on a ratio of charges to cost. Any hospital when requested by the department shall supply such information as necessary to justify its rate, charges or costs. All additional services provided by the hospital shall be purchased at rates established by the department after consultation with the hospital. The department shall purchase nursing home care by contract. The department shall establish regulations for reasonable nursing home accounting and reimbursement systems which shall provide that no payment shall be made to a nursing home which does not permit inspection by the department of social and health services of every part of its premises and an examination of all records, including financial records, methods of administration, general and special dietary programs, the disbursement of drugs and methods

of supply, and any other records the department deems relevant to the establishment of such a system.

All other services and supplies provided under the program shall be secured by contract.

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

The department may purchase care in institutions for mental diseases by contract. The department shall establish rules for reasonable accounting and reimbursement systems for such care. Institutions for mental diseases are certified under the federal medicaid program and primarily engaged in providing diagnosis, treatment, or care to persons with mental diseases, including medical attention, nursing care, and related services.

Sec. 16. Section 44, chapter 177, Laws of 1980 and RCW 74.46.440 are each amended to read as follows:

Only those services which are authorized for a facility pursuant to the medical care program shall be reimbursed under this chapter. Services provided by institutions for mental diseases shall not be reimbursed under this chapter.

Sec. 17. Section 2, chapter 177, Laws of 1980 as last amended by section 6, chapter 476, Laws of 1987 and RCW 74.46.020 are each amended to read as follows:

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

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

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

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

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

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

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

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

(8) "Beneficial owner" means:

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

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

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

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

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

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

(ii) Through the conversion of an ownership interest;

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

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

except that, any person who acquires an ownership interest or power specified in subparagraphs (i), (ii), or (iii) of this subparagraph (c) with the purpose or effect of changing or influencing the control of the contractor, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the

beneficial owner of the ownership interest which may be acquired through the exercise or conversion of such ownership interest or power;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(29) "Net invested funds" means the net book value of tangible fixed assets employed by a contractor to provide services under the medical care

program, including land, buildings, and equipment as recognized and measured in conformity with generally accepted accounting principles, plus an allowance for working capital which shall be five percent of the allowable costs of each contractor for the previous calendar year.

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

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

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

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

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

(35) "Qualified therapist" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(40) "Secretary" means the secretary of the department of social and health services.

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

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

****NEW SECTION. Sec. 18. The department, in cooperation with the state's area agencies on aging, shall prepare printed information regarding the availability of long-term care services in the state. The department shall distribute the information to the state's nursing homes and work with professional organizations representing physicians to encourage distribution of the information to patients in need of long-term care services. Nursing homes shall make the information available prior to accepting new residents for admission.***

The information shall include current long-term care services options, including community based and residential services, in an easily understandable manner explaining the nature of the services and other information necessary to allow individuals to assess what services might be appropriate given

their functional limitations. The information shall also contain phone numbers and addresses of private and public resources available to assist individuals and their families in assessing the service needs of the individual so that they may make informed decisions about choosing long-term care services.

*Sec. 18 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 19. Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989.

Passed the House April 22, 1989.

Passed the Senate April 21, 1989.

Approved by the Governor May 12, 1989, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 12, 1989.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 18, Engrossed Substitute House Bill No. 1864 entitled:

"AN ACT Relating to quality of care in nursing homes."

Section 18 requires that the Department of Social and Health Services, in cooperation with the state's area agencies on aging, prepare and distribute printed information regarding the availability of long-term care services in the state. In addition, nursing homes are required to make the information available prior to accepting new residents for admission. While there is value in the information required under this section, there is no budget appropriation for the development, printing and distribution of this material.

With the exception of section 18, Engrossed Substitute House Bill No. 1864 is approved."

CHAPTER 373

[Substitute House Bill No. 1983]

CONTEMPT OF COURT

AN ACT Relating to contempt of court; amending RCW 5.56.061, 7.43.110, 7.43.120, 7.48.080, 7.80.160, 10.01.180, 10.14.120, 11.64.022, 13.32A.250, 13.34.165, 18.72.190, 18.130.070, 18.130.190, 26.09.160, 26.18.050, 26.44.067, 41.56.490, 47.64.140, 79.01.704, and 82.32.110; adding a new chapter to Title 7 RCW; repealing RCW 7.20.010, 7.20.020, 7.20.030, 7.20.040, 7.20.050, 7.20.060, 7.20.070, 7.20.080, 7.20.090, 7.20.100, 7.20.110, 7.20.120, 7.20.130, 7.20.140, and 9.23.010; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The definitions in this section apply throughout this chapter:

(1) "Contempt of court" means intentional:

(a) Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to impair its authority, or to interrupt the due course of a trial or other judicial proceedings;