

I agree with the purpose of both bills. However, there are four double amendments that must be corrected.

Section 7 of Engrossed Substitute Senate Bill No. 3261 would conflict with the language of Section 1 of Substitute House Bill No. 1114. Therefore, I have vetoed Section 7 of Engrossed Substitute Senate Bill No. 3261 to avoid any possible confusion among the users of the State Energy Code.

Section 12 of Engrossed Substitute Senate Bill No. 3261 would make a minor amendment to a section of the State Building Code and makes reference to an obsolete federal code. Section 2 of Substitute House Bill No. 1114 extensively amends the same section of the State Building Code. Therefore, I have vetoed Section 12 of Engrossed Substitute Senate Bill No. 3261 as no longer being required.

Section 14 of Engrossed Substitute Senate Bill No. 3261 amends an obsolete provision of the State Building Code that would be repealed by Section 5 of Substitute House Bill No. 1114. Therefore, I have vetoed Section 14 of Engrossed Substitute Senate Bill No. 3261 to avoid any possible confusion.

Section 18 of Engrossed Substitute Senate Bill No. 3261 recodifies several obsolete sections of the State Building Code. Section 5 of Substitute House Bill No. 1114 repeals the same sections. Therefore, I have vetoed Section 18 of Engrossed Substitute Senate Bill No. 3261 as the recodification will not be necessary.

With the exceptions of Section 7, 12, 14, and 18, which are vetoed, Engrossed Substitute Senate Bill No. 3261 is approved."

CHAPTER 361

[Engrossed Substitute Senate Bill No. 3390]

NURSING HOMES—AUDITING AND COST REIMBURSEMENT

AN ACT Relating to nursing home auditing and cost reimbursement; amending RCW 74.46.180, 74.46.680, 74.46.690, 74.46.040, 74.46.050, 74.46.060, 74.46.080, 74.46.090, 74.46.100, 74.46.105, 74.46.130, 74.46.160, 74.46.475, 74.46.820, 74.46.460, 74.46.020, 74.46.530, and 74.46.430; creating a new section; repealing RCW 74.46.520; and declaring an emergency.

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

Sec. 1. Section 18, chapter 177, Laws of 1980 as last amended by section 147, chapter 7, Laws of 1985 and RCW 74.46.180 are each amended to read as follows:

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

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

(3) Within the cost centers of nursing services and food, all savings resulting from the respective allowable costs being lower than the respective reimbursement rate paid to the contractor during the report period shall be refunded. In computing a preliminary or final settlement, savings in a cost center may be shifted to cover a deficit in another cost center up to the amount of any savings: PROVIDED, That not more than twenty percent of

the rate in a cost center may be shifted into that cost center and no shifting may be made into the property cost center.

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

(5) All allowances provided by RCW 74.46.530 shall be retained by the contractor. Any industrial insurance dividend or premium discount under RCW 51.16.035 shall be retained by the contractor to the extent that such dividend or premium discount is attributable to the contractor's private patients.

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

(a) Deduct the amount of refund due plus assessment of interest, as determined by the secretary, from payment amounts due the contractor; or

(b) In the instance the contract has been terminated, (i) deduct the amount of refund due plus an assessment of interest, determined by the secretary, from any payments due; or (ii) assess the amount due plus interest, as determined by the secretary, on the amount due.

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

Sec. 2. Section 68, chapter 177, Laws of 1980 and RCW 74.46.680 are each amended to read as follows:

(1) On the effective date of a change of ownership the department's contract with the old owner shall be terminated. The old owner shall give the department ((thirty)) sixty days' written notice of such termination. When certificate of need and/or section 1122 approval is required pursuant to chapter 70.38 RCW and Part 100, Title 42 CFR, for the new owner to

acquire the facility, and the new owner wishes to continue to provide service to recipients without interruption, certificate of need and/or section 1122 approval shall be obtained before the old owner submits a notice of termination.

(2) If the new owner desires to participate in the cost-related reimbursement system, it shall meet the conditions specified in RCW 74.46.660 and shall submit a projected budget in accordance with RCW 74.46.670 no later than sixty days before the date of the change of ownership. The facility contract with the new owner shall be effective as of the date of the change of ownership.

Sec. 3. Section 69, chapter 177, Laws of 1980 as amended by section 36, chapter 67, Laws of 1983 1st ex. sess. and RCW 74.46.690 are each amended to read as follows:

(1) When a facility contract is terminated for any reason, the old contractor shall submit final reports as required by RCW 74.46.040. ~~((Payment for care provided during the final thirty days of service under a contract will be held until the contractor has filed a properly completed final cost report, an audit has been completed by the department, and final settlement has been determined, such settlement not to exceed ninety days following completion of the audit process.~~

~~(2) Following final settlement, a payment withheld pursuant to subsection (1) of this section will be sent to the contractor after any overpayment determined in connection with final settlement has been deducted. If the contractor contests the settlement determination in accordance with RCW 74.46.170, the department will hold the amount in dispute pending completion of the appeal process, but will release the balance of such payment to the contractor.~~

~~(3) The department will release a payment which would be withheld pursuant to subsection (1) of this section, provided a bond issued by a bonding company acceptable to the department is filed by the contractor. The bond shall:~~

- ~~(a) Be in an amount equal to the released payment;~~
- ~~(b) Be for a term sufficient to ensure effectiveness after final settlement and the exhaustion of administrative and judicial remedies;~~
- ~~(c) Provide that the full amount of the bond shall be paid to the department if a properly completed final audited cost report is not filed in accordance with this chapter, or if financial records supporting this record are not preserved and made available to the auditor; and~~

~~(d) Provide that an amount equal to any recovery the department determines is due from the contractor at settlement, but not exceeding the amount of the bond, shall be paid to the department in the event the contractor does not pay the refund within sixty days following receipt of written demand or the conclusion of administrative or judicial proceedings to contest settlement issues.~~

(4)) (2) Upon notification of a contract termination, the department shall determine by preliminary or final settlement calculations the amount of any overpayments made to the contractor, including overpayments disputed by the contractor. If preliminary or final settlements are unavailable for any period up to the date of contract termination, the department shall make a reasonable estimate of any overpayment or underpayments for such periods. The reasonable estimate shall be based upon prior period settlements, available audit findings, the projected impact of prospective rates, and other information available to the department.

(3) The old contractor shall provide security, in a form deemed adequate by the department, in the amount of determined and estimated overpayments, whether or not the overpayments are the subject of good faith dispute. Security shall consist of:

(a) Withheld payments due the contractor; or

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

(c) An assignment of funds to the department; or

(d) Collateral acceptable to the department; or

(e) A purchaser's assumption of liability for the prior contractor's overpayment; or

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

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

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

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

(c) Be for a term sufficient to ensure effectiveness after final settlement and the exhaustion of administrative and judicial remedies: PROVIDED, That the bond or assignment shall initially be for a term of five years, and shall be forfeited if not renewed thereafter in an amount equal to any remaining overpayment in dispute;

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

(e) Provide that an amount equal to any recovery the department determines is due from the contractor at settlement, but not exceeding the amount of the bond and assignment, shall be paid to the department if the contractor does not pay the refund within sixty days following receipt of written demand or the conclusion of administrative or judicial proceedings to contest settlement issues.

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

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

(7) The contractor shall file a properly completed final cost report in accordance with the requirements of this chapter, which shall be audited by the department. A final settlement shall be determined within ninety days following completion of the audit process, including any administrative review of the audit requested by the contractor.

(8) Following determination of settlement for all periods, security held pursuant to this section shall be released to the contractor after overpayments determined in connection with final settlement have been paid by the contractor. If the contractor contests the settlement determination in accordance with RCW 74.46.170, the department shall hold the security, not to exceed the amount of estimated unrecovered overpayments being contested, pending completion of the administrative appeal process.

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

(10) If a contract is terminated solely in order for the same owner to contract with the department to deliver services to another classification of medical care recipients at the same facility, the contractor is not required to submit final cost reports, and ((payment for the final thirty days will not be withheld)) security shall not be required.

Sec. 4. Section 4, chapter 177, Laws of 1980 as amended by section 1, chapter 67, Laws of 1983 1st ex. sess. and RCW 74.46.040 are each amended to read as follows:

(1) Not later than March 31(~~(, 1982, and)~~) of each year (~~((thereafter))~~), each contractor shall submit to the department an annual cost report(~~((, and such financial statements as are required by this chapter,))~~) for the period from January 1st through December 31st of the preceding year.

(2) Not later than one hundred twenty days following the termination of a contract, the contractor shall submit to the department a cost report(~~((, and financial statements as are required by this chapter,))~~) for the period from January 1st through the date the contract terminated.

(3) Two extensions of not more than thirty days each may be granted by the department upon receipt of a written request setting forth the circumstances which prohibit the contractor from compliance with a report due date; except, that the secretary shall establish the grounds for extension in rule and regulation. Such request must be received by the department at least ten days prior to the due date.

Sec. 5. Section 5, chapter 177, Laws of 1980 and RCW 74.46.050 are each amended to read as follows:

If ~~((either))~~ the cost report ~~((or the financial statements are))~~ is not properly completed or if ~~((they are))~~ it is not received by the due date, all or part of any payments due under the contract may be withheld by the department until such time as the required cost report ~~((and financial statements are))~~ is properly completed and received.

Sec. 6. Section 6, chapter 177, Laws of 1980 as amended by section 2, chapter 67, Laws of 1983 1st ex. sess. and RCW 74.46.060 are each amended to read as follows:

(1) Cost reports shall be prepared in a standard manner and form, as determined by the department, which shall provide for ~~((financial statements;))~~ an itemized list of allowable costs~~((;))~~ and a preliminary settlement report. Costs reported shall be determined in accordance with generally accepted accounting principles, the provisions of this chapter, and such additional rules and regulations as are established by the secretary.

(2) ~~((All financial statements of a contractor must be prepared in accordance with generally accepted accounting principles, the provisions of this chapter, and such additional rules and regulations as are established by the secretary:))~~

~~((3))~~ The records shall be maintained on the accrual method of accounting and agree with or be reconcilable to the cost report ~~((and the financial statements))~~.

Sec. 7. Section 8, chapter 177, Laws of 1980 as amended by section 3, chapter 67, Laws of 1983 1st ex. sess. and RCW 74.46.080 are each amended to read as follows:

(1) All records supporting the required cost reports ~~((and financial statements))~~, as well as trust funds established by RCW 74.46.700, shall be retained by the contractor for a period of four years following the filing of such reports at a location in the state of Washington specified by the contractor. All records supporting the cost reports and financial statements filed with the department before the effective date of this 1985 act shall be retained by the contractor for four years following their filing.

The department may direct ~~((such))~~ supporting records to be retained for a longer period if there remain unresolved questions on the cost reports ~~((and financial statements))~~. All such records shall be made available upon demand to authorized representatives of the department, the office of the

state auditor, and the United States department of health and human services.

(2) When a contract is terminated, all payments due will be withheld until accessibility and preservation of the records within the state of Washington are assured.

Sec. 8. Section 9, chapter 177, Laws of 1980 and RCW 74.46.090 are each amended to read as follows:

The department will retain the required cost reports (~~(and financial statements)~~) for a period of one year after final settlement, or the period required under ~~((the provisions of))~~ chapter 40.14 RCW, whichever is ~~((greater))~~ longer.

Sec. 9. Section 10, chapter 177, Laws of 1980 as amended by section 4, chapter 67, Laws of 1983 1st ex. sess. and RCW 74.46.100 are each amended to read as follows:

The principles inherent within RCW 74.46.105 and 74.46.130 are:

(1) To ascertain, through department audit, that the costs for each year are accurately reported, thereby providing a valid basis for future rate determination;

(2) To ascertain, through department audits of the cost reports, that cost reports properly reflect the financial ~~((statements))~~ records of the contractor, particularly as they pertain to related organizations and beneficial ownership, thereby providing a valid basis for the determination of return as specified by this chapter;

(3) To ascertain, through department audit that compliance with the accounting and auditing provisions of this chapter and the rules and regulations of the department as they pertain to these accounting and auditing provisions is proper and consistent; and

(4) To ascertain, through department audits, that the responsibility of the contractor has been met in the maintenance of patient trust funds.

Sec. 10. Section 5, chapter 67, Laws of 1983 1st ex. sess. and RCW 74.46.105 are each amended to read as follows:

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

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

(2) Beginning with audits for calendar year 1983, up to one hundred percent of contractors cost reports and patient care trust fund accounts shall be audited: PROVIDED, That each contractor shall be audited at least once in every three-year period.

(3) Facilities shall be selected for sample audits within one hundred twenty days of submission of a correct and complete cost report, and shall be so informed of the department's intent to audit. Audits so scheduled shall be completed within one year of selection.

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

(5) The audit will result in a schedule summarizing appropriate adjustments to the contractor's cost report. These adjustments will include an explanation for the adjustment, the general ledger account or account group, and the dollar amount. Patient trust fund audits shall be reported separately and in accordance with RCW 74.46.700.

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

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

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

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

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

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

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

Sec. 11. Section 13, chapter 177, Laws of 1980 as amended by section 7, chapter 67, Laws of 1983 1st ex. sess. and RCW 74.46.130 are each amended to read as follows:

(1) For the requirements of RCW 74.46.105, the contractor shall be notified by the department at least ten working days in advance of the engagement. Upon such notification, the contractor shall:

(a) Provide access to the facility, all records, and all working papers which are in support of the cost report (~~((and financial statements;))~~) and patient trust funds; and

(b) Prepare reconciliation of the cost report (~~((and financial statements))~~) with (i) applicable federal income and federal and state payroll tax returns and (ii) the records for the period covered by the cost report (~~((and financial statements))~~).

(2) To facilitate department audit, the owner or administrator of a facility shall designate and make available an individual or individuals to respond to questions and requests for information from auditors. The designated individual or individuals shall have sufficient knowledge of the issue or function to provide accurate information.

Sec. 12. Section 16, chapter 177, Laws of 1980 as amended by section 9, chapter 67, Laws of 1983 1st ex. sess. and RCW 74.46.160 are each amended to read as follows:

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

(2) After completion of the audit process, including exhaustion or mutual termination of reviews and appeals of audit findings or determinations, the department will submit a final settlement report by cost center to the contractor which fully substantiates disallowed costs, refunds, underpayments, or adjustments to the contractor's (~~((financial statements and))~~) cost report. Where the contractor is pursuing judicial or administrative review or appeal in good faith regarding audit findings or determinations, the department may issue a partial final settlement to recover overpayments based on audit adjustments not in dispute.

Sec. 13. Section 23, chapter 67, Laws of 1983 1st ex. sess. and RCW 74.46.475 are each amended to read as follows:

(1) The department shall analyze the submitted cost report (~~((and financial statements))~~) of each contractor to determine if the information is correct, complete, and reported in conformance with generally accepted accounting principles, the requirements of this chapter and such rules and

regulations as the secretary may adopt. If the analysis finds that the cost report (~~(or financial statements are)~~) is incorrect or incomplete, the department may make adjustments to the reported information for purposes of establishing reimbursement rates. A schedule of such adjustments shall be provided to contractors and shall include an explanation for the adjustment and the dollar amount of the adjustment. Adjustments shall be subject to review and appeal as provided in this chapter.

(2) The department shall accumulate data from properly completed cost reports (~~(and financial statements)~~) for use in:

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

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

Sec. 14. Section 82, chapter 177, Laws of 1980 as amended by section 41, chapter 67, Laws of 1983 1st ex. sess. and RCW 74.46.820 are each amended to read as follows:

(1) Cost reports and their final audit reports shall be subject to public disclosure pursuant to the requirements of chapter 42.17 RCW. Notwithstanding any other provision of law, ~~((financial statements))~~ cost report schedules showing information on rental or lease of assets, the facility or corporate balance sheet, schedule of changes in financial position, statement of changes in equity-fund balances, notes to financial statements, and any accompanying schedules summarizing the adjustments to a contractor's financial records, reports on review of internal control and accounting procedures, and letters of comments or recommendations relating to suggested improvements in internal control or accounting procedures which are prepared pursuant to the requirements of this chapter shall be exempt from public disclosure.

This subsection does not prevent a contractor from having access to its own records or from authorizing an agent or designee to have access to the contractor's records.

(2) Regardless of whether any document or report submitted to the secretary pursuant to this chapter is subject to public disclosure, copies of such documents or reports shall be provided by the secretary, upon written request, to the legislature and to state agencies or state or local law enforcement officials who have an official interest in the contents thereof.

Sec. 15. Section 46, chapter 177, Laws of 1980 as last amended by section 21, chapter 67, Laws of 1983 1st ex. sess. and RCW 74.46.460 are each amended to read as follows:

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

(2) Rates may be adjusted as determined by the department to take into account variations of more than ten percent in the distribution of patient classifications or changes in patient characteristics from the prior reporting year, program changes required by the department, or changes in staffing levels at a facility required by the department~~((, economic trends and conditions, and/or administrative review provided by RCW 74.46.780 and))~~. Rates shall be adjusted for any capitalized additions or replacements made as a condition for licensure or certification.

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

(4) All prospective reimbursement rates for 1984 and thereafter shall be determined utilizing the prior year's desk-reviewed cost reports.

Sec. 16. Section 2, chapter 177, Laws of 1980 as amended by section 1, chapter 117, Laws of 1982 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 pledgee 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 pledgee 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, 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)~~ (26) "Medical care program" means medical assistance provided under RCW 74.09.500 or authorized state medical care services.

~~((26))~~ (27) "Medical care recipient" or "recipient" means an individual determined eligible by the department for the services provided in chapter 74.09 RCW.

~~((27))~~ (28) "Net book value" means the historical cost of an asset less accumulated depreciation.

~~((28))~~ (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.

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

~~((30))~~ (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.

~~((31))~~ (32) "Ownership interest" means all interests beneficially owned by a person, calculated in the aggregate, regardless of the form which such beneficial ownership takes.

~~((32))~~ (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.

~~((33))~~ (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.

~~((34))~~ (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.

~~((35))~~ (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.

~~((36))~~ (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.

~~((37))~~ (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.

~~((38))~~ (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.

~~((39))~~ (40) "Secretary" means the secretary of the department of social and health services.

~~((40))~~ (41) "Title XIX" or "Medicaid" means the 1965 amendments to the social security act, P.L. 89-07, as amended."

Sec. 17. Section 53, chapter 177, Laws of 1980 as last amended by section 28, chapter 67, Laws of 1983 1st ex. sess. and RCW 74.46.530 are each amended to read as follows:

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

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

(b) In computing the portion of net invested funds representing the net book value of tangible fixed assets, the same assets, depreciation bases, lives, and methods referred to in RCW 74.46.330, 74.46.350, 74.46.360, and 74.46.370, including owned and leased assets, shall be utilized, except that the capitalized cost of land upon which the facility is located and such other contiguous land which is reasonable and necessary for use in the regular course of providing patient care shall also be included. In the case of leased facilities where the net invested funds are unknown or the contractor is unable to provide necessary information to determine net invested funds, the secretary shall have the authority to determine an amount for net invested funds based on an appraisal conducted according to RCW 74.46.360(1).

(c) In determining the variable return allowance:

(i) The department will first rank all facilities in numerical order from highest to lowest according to their average per diem allowable costs for the

sum of the administration and operations and property cost centers for the previous cost report period.

(ii) The department shall then compute the variable return allowance by multiplying the appropriate percentage amounts, which shall not be less than one percent and not greater than four percent, by the total prospective rate for each facility, as determined in RCW 74.46.450 through 74.46.510. The percentage amounts will be based on groupings of facilities according to the rankings as established in subparagraph ~~((2))~~ (1)(b)(i) of this section. Those groups of facilities with lower per diem costs shall receive higher percentage amounts than those with higher per diem costs.

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

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

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

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

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

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

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

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

Sec. 18. Section 42, chapter 177, Laws of 1980 as amended by section 18, chapter 67, Laws of 1983 1st ex. sess. and RCW 74.46.420 are each amended to read as follows:

The following principles are inherent in RCW 74.46.430 through 74.46.590:

(1) Reimbursement rates will be set prospectively on a per patient day basis; and

~~(2) ((Rates established in accordance with this chapter shall be reasonable and adequate to meet the costs that must be incurred by economically and efficiently operated facilities to provide services which meet the needs of a medical care recipient in compliance with applicable standards; and~~

~~(3))~~ The rates so established will be adjusted for economic conditions and trends in accordance with appropriations made by the legislature as consistent with federal requirements for the period to be covered by such rates.

NEW SECTION. Sec. 19. Section 52, chapter 177, Laws of 1980, section 148, chapter 7, Laws of 1985 and RCW 74.46.520 are each repealed.

NEW SECTION. Sec. 20. This act shall not be construed as affecting any existing right acquired or any obligation or liability incurred under the statutes amended or repealed by this act or any rule, regulation, or order

adopted under those sections, nor as affecting any proceeding instituted under those sections.

NEW SECTION. Sec. 21. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 27, 1985.

Passed the House April 27, 1985.

Approved by the Governor May 20, 1985.

Filed in Office of Secretary of State May 20, 1985.

CHAPTER 362

[Engrossed Senate Bill No. 3357]

COLLEGE AND UNIVERSITY TUITION AND FEES—NONRESIDENTS— MILITARY PERSONNEL EXEMPTION

AN ACT Relating to tuition and fees; and amending RCW 28B.15.014.

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

Sec. 1. Section 4, chapter 273, Laws of 1971 ex. sess. as last amended by section 1, chapter 232, Laws of 1984 and RCW 28B.15.014 are each amended to read as follows:

The following nonresidents shall be exempted from paying the nonresident tuition and fee differential:

(1) Any person who resides in the state of Washington and who holds a graduate service appointment designated as such by a public institution of higher education or is employed for an academic department in support of the instructional or research programs involving not less than twenty hours per week during the term such person shall hold such appointment.

(2) Any faculty member, classified staff member or administratively exempt employee holding not less than a half time appointment at an institution who resides in the state of Washington, and the dependent children and spouse of such persons.

(3) Active-duty military personnel (~~(of field grade or lower rank)~~) stationed in the state of Washington and the spouses and dependents of such military personnel (~~(for the first twelve months they are stationed in the state of Washington)~~).

(4) Any immigrant refugee and the spouse and dependent children of such refugee, if the refugee (a) is on parole status, or (b) has received an immigrant visa, or (c) has applied for United States citizenship.

Passed the Senate March 16, 1985.

Passed the House April 24, 1985.

Approved by the Governor May 20, 1985.

Filed in Office of Secretary of State May 20, 1985.