

**STATE OF WASHINGTON
DEPARTMENT OF HEALTH
OFFICE OF PROFESSIONAL STANDARDS**

In the Matter of:)	OPS Nos.	95-09-25-094 CON
)		95-09-25-095 CON
EAGLE HEALTHCARE, INC.,)		95-09-25-096 CON
)		95-09-25-097 CON
PETITIONER.)		95-09-25-098 CON
)	FINDINGS OF FACT,	
)	CONCLUSIONS OF LAW,	
)	AND FINAL ORDER	
_____)		

Eagle Healthcare, Inc., (the Petitioner) requested bed banking at five of its facilities. Presiding Officer Susan L. Boots (the Presiding Officer), conducted a brief adjudicative proceeding and issued her Amended Initial Order: Proposed Findings of Fact, Conclusions of Law and Decision (the Initial Order) on February 10, 1997. The Initial Order granted some of the Petitioner's requests for bed banking and denied others. The Petitioner, through its attorneys of record M. Katherine Julin and Gregory S. Worden, petitioned for review of the Initial Order by a Health Law Judge. Having considered the Initial Order and the Petitioner's petition for review, Senior Health Law Judge Eric B. Schmidt issues the following:

I. FINDINGS OF FACT

1.1 On June 30, 1995, the Petitioner requested that the Washington State Department of Health Certificate of Need Program (the Program), approve the banking of nursing home beds as follows, pursuant to RCW 70.38.111(8):

- (a) Highland Terrace Nursing Center - 41 beds;
- (b) Walnut Grove Nursing Home - 14 beds;
- (c) Grandview Health Care Center - 20 beds;
- (d) Northgate Rehabilitation Center - 28 beds;

- (e) Pinehurst Park Terrace - 17 beds; and
- (f) Hillcrest Manor - 4 beds.

1.2 On June 30, 1995, the Program issued letters regarding the bed banking requests for each facility. The Program stated “beds may be banked to reduce the number of beds in a nursing home room to one or two beds or to otherwise enhance the quality of life for residents. Improvements in the nursing home that would qualify under the area of quality of life enhancements include: expansion of the dining area, therapy areas, spiritual rooms, and family meeting rooms.” The Program granted and denied the requests for bed banking as follows:

- (a) Highland Terrace Nursing Center - 0 beds approved, 17 beds denied because requests were for business office space, admissions space, medical records space, employee lounge, social service space, CNA training space, staff development and activities space, 24 beds not addressed;
- (b) Walnut Grove Nursing Home - 7 beds approved, 7 beds denied because the requests were for office space;
- (c) Grandview Health Care Center - 18 beds approved, 2 beds denied because the requests were for office space;
- (d) Northgate Rehabilitation Center - 23 beds approved, 4 beds denied because the requests were for a patient conference room and for office space, 1 bed not addressed;
- (e) Pinehurst Park Terrace - 10 beds approved, 7 beds denied because the requests were for conference room, medical records space, office space and storage space; and
- (f) Hillcrest Manor - 4 beds approved.

1.3 Presiding Officer Boots conducted the brief adjudicative proceeding, made findings of fact and conclusions of law, and issued her Initial Order on February 15, 1997. The Presiding Officer found that bed banking can be approved only where the facility can satisfy the licensing requirements for boarding homes (Findings of Fact 1.10 to 1.15) and found that with the exception of the Northgate Rehabilitation Center, none of the facilities

could satisfy the boarding home licensing regulations that prohibit intermingling between nursing home residents and boarding home residents (Findings of Fact 1.17 to 1.21).

1.4 For the reasons given in Conclusion of Law 2.4 of this Order, the Senior Health Law Judge finds that Findings of Fact 1.10 to 1.15 and 1.17 to 1.21 are not relevant to the decision of whether the Petitioner's bed banking requests should have been allowed. The Senior Health Law Judge vacates Findings of Fact 1.10 to 1.15 and 1.17 to 1.21 of the Initial Order. The Senior Health Law Judge adopts the remaining Findings of Fact of the Initial Order.

II. CONCLUSIONS OF LAW

2.1 The Senior Health Law Judge, as the designee of the Secretary of the Department of Health, has jurisdiction to review the Presiding Officer's Initial Order and to issue a final order that adopts, modifies, or revises the Initial Order in whole or in part. WAC 246-10-102 and 246-10-702.

2.2 The legal issue in this case is the application of RCW 70.38.111(8)(a):

A nursing home that voluntarily reduces the number of its licensed beds to provide assisted living, licensed boarding home care, adult day care, adult day health, respite care, hospice, outpatient therapy services, congregate meals, home health, or senior wellness clinic, or to reduce to one or two the number of beds per room or to otherwise enhance the quality of life for residents in the nursing home, may convert the original facility or portion of the facility back, and thereby increase the number of nursing home beds to no more than the previously licensed number of nursing home beds without obtaining a certificate of need under this chapter, provided the facility has been in continuous operation and has not been purchased or leased

2.3 RCW 70.38.111(8)(a) allows a nursing home to voluntarily reduce or "bank" beds for three purposes: to provide assisted living or other services, to reduce the number

of beds in a room to one or two, or to “otherwise enhance the quality of life for residents in the nursing home.”

2.4 In her Initial Order, the Presiding Officer concluded that before a facility can request to bank beds in order to provide another type of care, it must demonstrate that the facility is susceptible to being converted into the type of facility that can provide that type of care. (Initial Order Conclusion of Law 2.1). In Petitioner’s case, she concluded that four of the five facilities could not be converted to provide licensed boarding home care, and therefore the requests for bed banking were properly denied. However, the Presiding Officer does not cite any authority for requiring the facility demonstrate its susceptibility to conversion as a prerequisite to approval of all bed banking. RCW 70.38.111(8)(a) contains no such prerequisite and no Department regulation contains such a prerequisite. In considering the requests from the Petitioner, the Program did not impose such a prerequisite. RCW 70.38.111(8)(a) allows bed banking for purposes other than conversion to another type of care, specifically to reduce the number of beds in room or otherwise enhance the quality of life of the residents of the nursing home. In the absence of some authority creating the prerequisite of demonstrating susceptibility to conversion in all requests for bed banking, the Presiding Officer erred in applying such a prerequisite. The Senior Health Law Judge vacates Conclusions 2.1 to 2.3 of the Initial Order.

2.5 In denying the Petitioner’s requests for bed banking, the Program and the Presiding Officer interpreted the phrase “otherwise enhance the quality of life for residents” as contained in RCW 70.38.111(8)(a). They interpreted that phrase to require that bed conversions provide direct patient benefits, and to exclude conversions for staff

or administrative purposes that provide indirect patient benefits, if any. (Initial Order Conclusion of Law 2.4). The Program and the Presiding Officer concluded “direct patient benefits” included expanded dining areas, therapy areas, spiritual rooms and family meeting rooms. (Initial Order Conclusion of Law 2.5).

2.6 The Petitioner responds that RCW 70.38.111(8)(a) does not require that bed banking requests be made room-specific, that RCW 70.38.111(8)(a) does not distinguish between direct and indirect patient benefits in deciding whether the bed banking would enhance the residents’ quality of life, and that the phrase “otherwise enhance the quality of life for residents” should be broadly construed.

2.7 The Senior Health Law Judge concludes that while RCW 70.38.111(8)(a) does not expressly require bed banking requests to be room-specific, some requests will require that level of specificity in order to determine whether the request would enhance the residents’ quality of life. The Program and the Presiding Officer did not err in requiring the Petitioner make room-specific bed banking requests.

2.8 The Senior Health Law Judge concludes that RCW 70.38.111(8)(a) does not distinguish between direct and indirect patient benefits in determining whether the requested bed banking would enhance the residents’ quality of life, and concludes the Program and the Presiding Officer erred in drawing such a distinction. However, the Senior Health Law Judge does not agree with the Petitioner that the term “enhance the quality of life for residents” should be so broadly construed as to cover all staff and administrative purposes.

2.9 The Senior Health Law Judge concludes the Petitioner has not shown how conversions of beds into rooms for office spaces, storage spaces, medical records

spaces, admissions spaces and employee lounges would “enhance the quality of life for residents.” However, the Senior Health Law Judge concludes the Petitioner has shown that conversions of beds for conference rooms, social service offices, CNA training spaces and staff development spaces would “enhance the quality of life for residents.”

2.10 The Senior Health Law Judge concludes that Initial Order Conclusions of Law 2.4 to 2.7 should be vacated and replaced by Conclusions 2.5 to 2.9 above.

2.11 The Petitioner also requests that the effective date for bed banking be changed from the date of the Initial Order, February 10, 1997, to the date the Petitioner withdrew the beds from service, June 30, 1995. The Program’s initial letters on the requests for bed banking used the June 30, 1995 date as the effective date. The Initial Order does not state the grounds for changing the effective date of the bed banking. Accordingly, the Senior Health Law Judge restores June 30, 1995 as the effective date of the bed banking, pursuant to RCW 70.38.111(8)(a), which provides in part “any conversion . . . shall comply with the same . . . requirements as existed at the time the nursing home voluntarily reduced its licensed beds”

III. ORDER

The Senior Health Law Judge MODIFIES the Initial Order of the Presiding Officer as follows:

3.1 In the case of Highland Terrace Nursing Center, paragraphs 3.1.1 and 3.1.2 of the Initial Order are MODIFIED to approve the following beds for banking:

<u>Room</u>	<u>Number of Beds</u>	<u>Purpose of Conversion</u>
36	2	Social Service Office
37	2	CNA Training
38	1	Staff Development

Therefore, the Department approves banking of 33 beds and denies banking of 8 beds at Highland Terrace Nursing Home.

3.2 In the case of Walnut Grove Nursing Home, paragraph 3.2 of the Initial Order, which affirmed the August 21, 1995 decision of the Program, is AFFIRMED.

Therefore, the Department approves banking of 7 beds and denies banking of 7 beds.

3.3 In the case of Grandview Health Care Center, paragraph 3.3 of the Initial Order, which affirmed the August 21, 1995 decision of the Program, is AFFIRMED.

Therefore, the Department approves banking of 18 beds and denies banking of 2 beds.

3.4 In the case of Northgate Rehabilitation Center, paragraph 3.4 of the Initial Order, which modified the August 21, 1995 decision of the Program, is AFFIRMED.

Therefore, the Department approves banking of 27 beds and denies banking of 1 bed.

3.5 In the case of Pinehurst Park Terrace, paragraph 3.5 of the Initial Order, which affirmed the August 21, 1995 decision of the Program, is MODIFIED to approve the following beds for banking:

<u>Room</u>	<u>Number of Beds</u>	<u>Purpose of Conversion</u>
120	2	Conference Room

Therefore, the Department approves banking of 12 beds and denies banking of 5 beds.

3.6 The effective date for all bed banking approved above is June 30, 1995.

THE PARTIES ARE FURTHER ADVISED:

As provided in RCW 34.05.461(3), 34.05.470, and WAC 246-10-704, either party may file a petition for reconsideration. The petition must be filed within ten days of service of this Order with the Office of Professional Standards, 2413 Pacific Avenue, PO Box 47872, Olympia, WA 98504-7872. The petition must state the specific grounds

