

# ARKANSAS REGISTER



## Proposed Rule Cover Sheet

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Name of Department Arkansas Department of Health

Agency or Division Name Health Services Permit Agency

Other Subdivision or Department, If Applicable \_\_\_\_\_

Previous Agency Name, If Applicable \_\_\_\_\_

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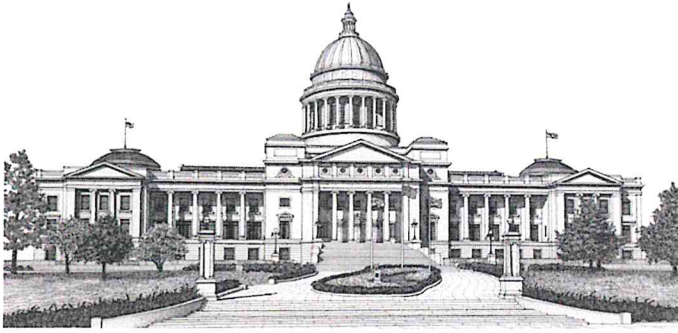
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## Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



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For Office

Use Only:

Effective Date \_\_\_\_\_ Code Number \_\_\_\_\_

Name of Agency Health Services Permit Agency

Department Arkansas Department of Health

Contact Traci Harris E-mail traci.harris@arkansas.gov Phone 501-661-2197

Statutory Authority for Promulgating Rules Arkansas Code Annotated 20-8-101

Rule Title: HSC Rule 100M Nursing Facility Bed Methodology

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(Check One)

Date

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Legal Notice Published .....

11/22/16

☒ 10 Days After Filing (ACA 25-15-204)

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12/27/16

☐ Other \_\_\_\_\_  
(Must be more than 10 days after filing date.)

Reviewed by Legislative Council .....

5/16/17

Adopted by State Agency .....

6/23/17

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Traci Harris traci.harris@arkansas.gov

June 20, 2024

Contact Person

E-mail Address

Date

### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted  
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

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Phone Number

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Director

Title

June 20, 2024

Date

## **HSC Regulation 100M Nursing Facility Bed Methodology**

### **DEFINITIONS:**

- The term "Licensed Beds" means the bed count as reflected on the current license issued by the Department of Human Services, Office of Long-Term Care.
- The term "Beds in Transition" means beds that originate from a licensed facility and are being transferred or moved to a new, existing or replacement facility in a different county and are awaiting final licensing of new construction. For purposes of projected need and the awarding of additional beds, the Beds in Transition shall not be considered licensed beds in the county into which they are being moved until the beds become licensed in that county.

### **I. POPULATION BASED METHODOLOGY**

- A. Population Based Methodology calculates the projected nursing facility bed need using estimated population data for four age groups (see below) for a service area (county). Need is projected five years forward using the most recent census data available from the UALR Institute of Economic Advancement and is reflected in the current published Bed Need Book.

#### **AGE GROUP BEDS PER 1000 POPULATION**

Below 65	0.7
65 to 74	10.0
75 to 84	39.3
85 and above	160.0

- B. Occupancy Requirement. In order to qualify for issuance of a Permit of Approval for additional beds in the county under the Population Based Need Methodology, counties which have a projected net "need" under this section must have had an average overall occupancy of at least 93% for the most recently available occupancy as reported by DHS and as reflected in the current quarterly published Bed Need Book.

## **II. UTILIZATION BASED METHODOLOGY**

A. Regardless of projected Need in a county, nursing facilities may acquire up to 25 additional beds if the applicant Nursing Facility:

1. Averaged 90.0% or greater occupancy according to the most recent 12 month census data available from DHS for at least four (4) months of the last six (6) month period; and
2. currently has no Approved but Unlicensed Beds; and
3. proposes to acquire beds from a facility that averaged 70% or less occupancy for the previous 12 month period according to the most recent 12 month occupancy data available from Dept. of Human Services as reflected in the most current published Bed Need Book; and
4. has not acquired beds pursuant to this Subsection II. A. in the previous 12 month period.

Once relocated and licensed to the acquiring facility, beds may not be transferred back or returned to the original facility unless all the requirements of this section Part II. A. are satisfied.

B. Nursing homes with less than 60 licensed beds could be approved to expand to 70 beds, if the facility:

1. averaged 90.0% or greater occupancy according to the most recently available census as reported by DHS for at least four (4) months of the last six (6) month period; and
2. is located in a county without a Population Based "need"; and
3. proposes to acquire beds from a facility that averaged less than 70% occupancy for the previous 12-month period according to the most recent 12-month census data available from Department of Human Services and as reflected in the current quarterly published Bed Need Book.
4. Is not located in a county where the number of approved but unlicensed beds equals 10% or more of the county's licensed beds in the previous 12 month period,

- C. Notwithstanding the foregoing provisions of this section II but subject to section V. 4. and 5. herein, and subject to commission approval, an existing facility may relocate beds within the county where the facility is located. In doing so, the facility may either move all or some of its existing beds or the facility may acquire and move beds from another facility located within the same county.

### **III. REPLACEMENT OF FACILITIES AND BEDS**

- A. Qualified applicants would be applicants who propose to replace an entire existing licensed facility with "new construction." Existing licensed nursing facilities are eligible for replacement without respect to the need methodology.

As used in this methodology, "new construction" means the replacement of an entire facility with a newly constructed facility.

This relocation of existing beds for purposes of "adding on" to an existing facility, irrespective of whether the "add on" is new construction, does not qualify for approval under this Section III.

- B. Regardless of county "need" and occupancy, Applicants may be approved for up to a 20% increase of their present licensed capacity when replacing a facility under this Subsection, with the resultant effect of transferring all residents to the replacement facility and closing the original licensed facility for business as a Nursing Facility. The Applicant must acquire the additional beds from a facility that averaged less than 70% occupancy for the previous 12-month period according to the most recent 12-month occupancy data available from Department of Human Services as reflected in the current quarterly published Bed Need Book. Applicants may contemporaneously apply to transfer existing licensed beds within the same county to be licensed in the replacement facility but such increase in beds by transfer shall not impact the calculation of 20% increase of existing licensed beds in the Applicant facility.
- C. Qualified applicants cannot combine any criteria to increase existing licensure by more than 20% except in the case of facilities expanding up to 70 beds. This does not affect applicants which qualify for approval under I.A.1. of this methodology.

- D. Qualified applicants may move to another county or counties if:
1. the Applicant's current beds are located where "existing" (i.e. licensed and approved) beds exceed the projected county need by 100 or more beds;
  2. the number of beds being moved does not exceed the projected net need of the county (or counties) to which the beds are being moved and;
  3. the moved beds are used for "new construction" and
  4. the occupancy for the county to which the facility or beds are being moved has had an average overall occupancy of 93% or more for the most recently available occupancy as reported by the quarterly published Bed Need Book.

#### **IV. APPLICATION APPROVAL PRIORITIES**

- A. In any one Review Cycle, for all applications submitted under Section II of this methodology, only two (2) applications may be approved for each county.
- B. In any one Review Cycle, for all the applications submitted under Section III of this methodology, only two (2) applications may be approved for each county.
- C. When making a decision on applications submitted for the same county in the same review cycle, additional beds available (according to the county's projected net need) will be awarded in the following ranked order:
1. Beds available shall first be allocated to applicants who propose to add beds to an existing licensed facility whose facility had a 96.0% average occupancy rate or greater for the most recently available occupancy as reported by DHS and as reflected in the currently quarterly published Bed Need Book, provided all requirements for approval of the application(s) are met.

Maximum Beds awarded pursuant to this first priority shall be either a number of beds equivalent of up to a 10% increase in the facility's existing number of licensed beds or 10 beds, whichever is greater.



2. Beds available shall next be allocated to applicants who propose to add beds to an existing licensed facility under Utilization Review, Section II, provided all requirements for approval of the application(s) are met.

Beds awarded pursuant to this second priority shall be either a number of beds equivalent of up to a 10% increase in the facility's existing number of licensed beds or 10 beds, whichever is greater. This paragraph (2) is not intended to require a county to have a projected net need to qualify for a Section II increase but rather is intended to ensure that if there is an increase approved in that Review Cycle, the additional beds awarded will be deducted from any projected net need before any other application with lesser priority is approved;

3. Remaining beds available shall next be allocated to applicants who propose to replace facilities pursuant to Section III, the Replacement methodology, who are eligible for a 20% increase in their licensed capacity; this paragraph (3) is not intended to require a county to have a projected net need to qualify for a Section III 20% increase but rather is intended to ensure that if there is a 20% increase approved in that Review Cycle, the additional beds awarded will be deducted from any projected net need before any other application with lesser priority is approved;
4. Remaining available beds shall next be allocated to applicants who have an existing facility with less than 70 beds who are proposing to expand to 70 beds. These applicants may be approved for a number of additional beds necessary to enable them to expand to 70 beds. However, if these applicants have less than 70 beds and more than 60 licensed beds they may be approved for up to a 10 bed increase.
5. Remaining beds available shall next be allocated to applicants proposing to construct a new facility which the Agency finds meet all criteria for approval.

## **V. UNFAVORABLE REVIEW**

A. An application for a Permit of Approval under the HSC Regulation 100M Nursing Home Methodology will be denied if it:

1. does not agree to eliminate all three (3) or more bed units in the applicant facility. A facility may have three (3) or more beds units only in order to comply with specific regulations for intensive care, Alzheimer's disease, and/or sub-acute care units (pertinent regulations to be promulgated by the Department of Human Services, Office of Long-Term Care),
2. is for an applicant home with current life threatening compliance issues that could not be corrected by the proposed construction, or
3. is for any nursing home found to have had an H level deficiency or higher by the Office of Long Term Care in the twelve (12) months preceding the date the application is placed under review or from the date the application is placed under review until the final decision of the Commission. This section is intended to prohibit the expansion of existing facilities with a history of serious non-compliance. This section, however, shall not apply to applicants under Section III who are replacing older facilities, or who are correcting the noted deficiency.
4. will cause a facility to exceed 140 beds, or
5. will create a facility with fewer than 70 beds
6. would create an under-served area. The Commission will make this determination.
7. is located in a county where the number of Approved but Unlicensed beds, including Beds in Transition, equals 10% or more of the county's licensed beds in the previous state fiscal year. e.g. if in 1997 County "A" had 140 licensed beds with a 28 bed approval then the facilities in County "A" would not be eligible for additional beds under either the Population Based or Utilization Based methodology. The rationale is that an increase in beds would have affected occupancy.

B. An application for a POA will be denied if the owner/operator, or the majority of its controlling individuals, applying for a Permit of Approval has abandoned one or more long-term facilities either in Arkansas or in another state.

C. The Agency may consider an applicant's compliance and enforcement history in determining whether to grant a Permit of Approval.



- D. Occupancy data on Medicaid certified facilities will be based on the report supplied by the Department of Human Services, Division of Medical Services to the Health Services Permit Agency. Occupancy data on facilities that did not report to the Department of Human Services, Office of Long-Term Care will be based on the survey conducted by the Health Services Permit Agency. (Non-reporting facilities include facilities without Medicaid beds and those facilities which changed ownership during the previous calendar year.)