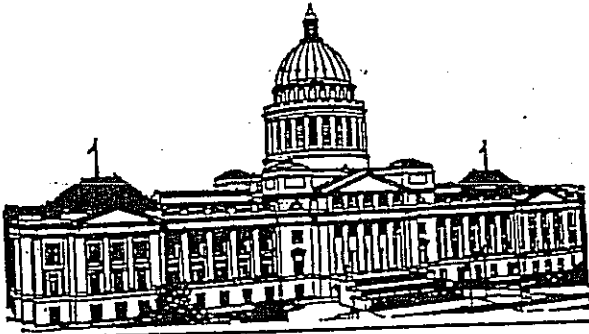


ARKANSAS REGISTER

Transmittal Sheet



Sharon Priest
Secretary of State
State Capitol Rm. 01
Little Rock, Arkansas 72201-1094

For Office Use Only: Effective Date _____ Code Number 049.00.01 -- 002

Name of Agency Health Services Agency

Department _____

Contact Person Mary Brizzi Phone 661-2501

Statutory Authority for Promulgating Rules Arkansas Code Annotated 20-8-101, et. seq.

	Date
Intended Effective Date	Legal Notice Published <u>12-4-2000</u>
<input type="checkbox"/> Emergency	Final Date for Public Comment <u>2-9-2001</u>
<input type="checkbox"/> 10 Days After Filing	Filed With Legislative Council <u>12-7-00</u>
<input type="checkbox"/> Other	Reviewed by Legislative Council <u>6-4-01</u>
	Adopted by State Agency <u>2-16-01</u>

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 As Amended.

Sharon Priest **RECEIVED**
Signature

JUN 06 2001

Director
661-2509
Phone Number
Title

SHARON PRIEST
SECRETARY OF STATE
BY _____

6-5-01
Date

ARKANSAS HEALTH SERVICES COMMISSION

FINANCIAL IMPACT STATEMENT
(In compliance with Act 884 of 1995)

PERSON COMPLETING THIS STATEMENT: Donna Redwood
Telephone Number: 501/661-2197 Fax Number: 501/661-2399

SHORT TITLE OF THIS RULE: Changes to the Nursing Home Bed Need
Methodology

1. Does this proposed, amended, or repealed rule or regulation have a financial impact? Yes _____ No X
2. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.
3. If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost of implementing the regulation.

Does not Apply

4. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule regulation.

Current Fiscal Year

Next Fiscal Year

\$500.00 per application

\$500.00 per application

5. What is the total estimated cost by fiscal year to the agency to implement this regulation?

Current Fiscal Year

Next Fiscal Year

None.

None

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SECRETARY OF STATE**

BY _____

HSC Regulation 100M Nursing Home Bed Methodology

All dates contained herein, (with one exception see below), will move forward one year each July 1st, e.g. on July 1, 1998, the date 2002 which is listed under "I. Population Based Methodology" will move forward to 2003. The sole exception is the defining date for "older" facilities. That date is July 1, 1974.*

Note: No applicant will be approved for additional beds if the county in which the applicant facility is located had the equivalent of 10% or more of the county's licensed bed capacity approved but unlicensed 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 effected occupancy.

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.

I. POPULATION BASED METHODOLOGY (PROJECTED TO 2002)

In order to qualify for additional beds, counties showing a "need" under this section must have had an overall occupancy of at least 94.5% for the previous State fiscal year. If a "need" is projected for additional nursing home beds in a county (based on the Commission's adopted formula) then the following would apply:

A. Applicants will be favored in the following ranked order:

1. Applicants whose facility had a 96.0% (i.e. at least 95.95%) average occupancy rate or greater for the previous State fiscal year. These applicants would be eligible for 10% increase in their licensed capacity or 10 beds, whichever is greater. Qualifying applicants will have a preference (for a total of up to 35 additional beds) over applicants proposing a new facility.
2. Applicants who proposed to replace older facilities*. These applicants would be eligible for a 20% increase in their licensed capacity.
3. Applicants who have a facility proposing to expand to 70 beds would be eligible to expand to 70 beds. Applicant facilities with less than 70 beds and more than 60 licensed beds would be eligible for a 10 bed increase.

*An "older facility" is one, that had any of its beds licensed before July 1, 1974. Nineteen seventy-four is the first year 8 ft. corridors were a construction requirement for nursing homes.

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- B. The Commission may exceed "need" when "need" is less than 10 beds in order to approve one applicant for a 10 bed increase (i.e., the 10 beds would not be spread over two (2) or more applicants).
- C. The Commission may disregard the overall county occupancy one time in order to approve a 70 bed facility in a county where the projected need for the county exceeds the "existing" (i.e., licensed and approved) beds by 250 or more beds. This rule could be used every three (3) years.

II. UTILIZATION BASED

- A. Nursing homes may acquire an additional 10 beds or a 10% increase in existing beds, whichever, is greater, from another facility either located in the same county or outside the county, if the applicant:
 - 1. averaged 95.0% (at least 94.95%) or greater occupancy for previous State fiscal year;
 - 2. currently has no approved but unlicensed beds and had no approved but unlicensed beds during the previous State fiscal year,
 - 3. acquires beds from a facility that averaged 70.0% or less occupancy for the past three State fiscal years,
 - 4. is located in a county without a Population-Based need; and
 - 5. is not located in a county which had the equivalent of 10% of the county's licensed bed capacity approved but unlicensed in the previous fiscal year (see P.1 introductory remarks.)

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% (i.e., at least 89.95%) or greater occupancy for the previous State fiscal year,
 - 2. currently has no approved but unlicensed beds and had no approved but unlicensed beds during the previous State fiscal year,

3. is located in a county without a Population Based "need"; and
 4. is not located in a county which had the equivalent of 10% of the county's licensed bed capacity approved but unlicensed in the previous State fiscal year (see p.1 introductory remarks).
- C. Nursing homes that first commenced operations in buildings constructed between August 1, 1996 and August 1, 2000 and which have unused bed capacity may add up to 10% of their licensed capacity or 10 beds, whichever is greater, notwithstanding any other provision of this methodology, if the facility:
1. averaged 96.0% (i.e., at least 95.95%) or greater occupancy for the previous State fiscal year;
 2. currently has no approved but unlicensed beds and had no approved but unlicensed beds during the previous State fiscal year;
 3. can add such additional beds without incurring additional capital expenditures related to construction;
 4. is located in a county without a Population Based need; and
 5. is not located in a county which had the equivalent of 10% of the county's licensed bed capacity approved but unlicensed in the previous State fiscal year (see P.1 introductory remarks).

Section "C" shall expire two (2) years from the effective date of this rule.

III. REPLACEMENT OF OLDER FACILITIES

- A. Qualified applicants would be facilities which had any of their present beds licensed before July 1, 1974 and would propose to replace their existing facility. Applicants would be approved for up to a 20% increase of their present licensed capacity.
- B. 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 effect applicants which qualify for approval under I.A.1. of this methodology.
- C. Qualified applicants may move to another county or counties if:
 1. the facility is located where "existing" (i.e. licensed and approved) beds exceed the projected county need by 200 or more beds;

2. the county (or counties) to which the facility is being moved has a projected need which exceeds "existing" beds by 200 or more beds, and;
3. the moved facility is replaced by new construction.

IV. UNFAVORABLE REVIEW

No application will be approved for additional beds that:

- A. 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),
- B. does not include a sprinkler system under regulations promulgated by the Department of Human Services, Office of Long-Term Care. (This applies to new facilities only),
- C. is for an applicant home with current life threatening compliance issues that could not be corrected by the proposed construction, or
- D. 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.
- E. will cause a facility to exceed 140 beds, or create a facility with fewer than 70 beds. Any deviation will require special consideration by the Commission.
- F. would create an under-served area. The Commission will make this determination.

NOTE: Occupancy data on Medicaid certified facilities will be based on the report supplied by the Department of Human Services, Office of Long-Term Care to the Health Services 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 Agency. (Non-reporting facilities include facilities without Medicaid beds and those facilities which changed ownership during the previous calendar year.)