

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS  
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE**

**DEPARTMENT/AGENCY** Arkansas Health Services Permit Agency  
**DIVISION** \_\_\_\_\_  
**DIVISION DIRECTOR** Deborah Frazier  
**CONTACT PERSON** Eric Tedford  
**ADDRESS** 5800 W. 10<sup>th</sup> St, Suite 805  
**PHONE NO.** 5016612509 **FAX NO.** 5016612399 **E-MAIL** eric.tedford@arkansas.gov  
**NAME OF PRESENTER AT COMMITTEE MEETING** Deborah Frazier  
**PRESENTER E-MAIL** deborah.frazier@arkansas.gov

**INSTRUCTIONS**

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

**Donna K. Davis  
Administrative Rules Review Section  
Arkansas Legislative Council  
Bureau of Legislative Research  
Room 315, State Capitol  
Little Rock, AR 72201**

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1. What is the short title of this rule? 1) HSC Regulation 500M. Assisted Living Methodology

2. What is the subject of the proposed rule? 1) Assisted Living Methodology changes.

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes  No   
If yes, please provide the federal rule, regulation, and/or statute citation.

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes  No   
If yes, what is the effective date of the emergency rule? \_\_\_\_\_

When does the emergency rule expire? \_\_\_\_\_

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes  No

5. Is this a new rule? Yes  No

If yes, please provide a brief summary explaining the regulation.

Does this repeal an existing rule? Yes  No

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes  No

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule?

If codified, please give Arkansas Code citation.

Arkansas code annotated 20-8-103. This code gives us both the broad authority to promulgate rules and the specific authority for this regulation.

7. What is the purpose of this proposed rule? Why is it necessary?

1) This rule imposes an 80% occupancy rule on all counties with two or more AL facilities. If a County with more than two Assisted Living Facilities has an average occupancy of less than 80%, that county will be shut down from future POA applications until the county reaches 80% occupancy. This rule is necessary to give newly constructed ALFs time to populate their facilities.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

www.arhspa.org

9. Will a public hearing be held on this proposed rule? Yes  No

If yes, please complete the following:

Date: March 21, 2012

Time: 10:00

Place: ADEQ, 5301 North Shore Dr, North Little Rock, AR

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

February 21, 2012

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

April 01, 2012 or 10 days after it is filed as a final rule.

12. Do you expect this rule to be controversial? Yes  No

This rule was submitted by the Arkansas Health Association and the Assisted Living Association to slow the growth of Assisted Living Facilities in high population counties, where there are more that two ALFs with average populations less than 80%. In the previous public comment period, there were thirteen letters of opposition and zero letters of support. Those opposing the passing of this rule did not want to limit the number of ALFs and potentially affordable assisted living facilities in these Counties.

If yes, please explain.

13. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

Arkansas Assisted Living Association

Home Care Association of Arkansas

Arkansas Residential Assisted Living Association

Arkansas Health Care Association

Arkansas State Hospice and Palliative Care Association

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**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Arkansas Health Services Permit Agency

**DIVISION** \_\_\_\_\_

**PERSON COMPLETING THIS STATEMENT** Eric Tedford

**TELEPHONE NO.** 5016612501 **FAX NO.** 5016612399 **EMAIL:** eric.tedford@arkansas.gov

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

**SHORT TITLE OF THIS RULE** HSC Regulation 500M. Assisted Living Methodology

1. Does this proposed, amended, or repealed rule have a financial impact? Yes  No
2. Does this proposed, amended, or repealed rule affect small businesses? Yes  No   
If yes, please attach a copy of the economic impact statement required to be filed with the Arkansas Economic Development Commission under Arkansas Code § 25-15-301 et seq.

3. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please give the incremental cost for implementing the rule. Please indicate if the cost provided is the cost of the program.

**Current Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
Total \_\_\_\_\_

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
Total \_\_\_\_\_

5. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule? Identify the party subject to the proposed rule and explain how they are affected.

**Current Fiscal Year**

\$ 0

**Next Fiscal Year**

\$ 0

6. What is the total estimated cost by fiscal year to the agency to implement this rule? Is this the cost of the program or grant? Please explain.

**Current Fiscal Year**

\$ \$0

**Next Fiscal Year**

\$ 0

### **Summary of Changes to the Rules**

The change to the assisted living methodology will limit the uncontrolled expansion of Assisted Living Facilities in the State. While the Health Services Permit Agency agrees with the Assisted Living Methodology currently in place, the Agency understands that with the current financial situation, having several POA applicants in a single county obtaining licensure for a facility around the same time can be difficult to the POA holders. The 80% occupancy rule will make sure that the Assisted Living Facilities in the county are being utilized before allowing additional facilities in the County.

In addition to the above 80% occupancy rule, there needs to be at least two licensed facilities in the county for this 80% to take effect.

If the county's occupancy is below 80%, but the total approved and licensed assisted living beds plus the total licensed residential care facility beds is less than 50% of the total projected beds for the county, the county will still be available for a POA application.

## **HSC REGULATION 500M. Assisted Living Methodology (01/12)**

### **SECTION III- NEED**

#### **POPULATION BASED NEED**

This methodology projects the need for Assisted Living beds at 30 beds per 1000 persons who are 65 years old and older. Need will consider the number of proposed and existing ALF beds and the number of proposed and existing RCF beds in a county. Need will be projected five years forward using the most recent census data available from the UALR Institute for Economic Advancement.

- A. An exception to the population based formula exists when occupied beds in all facilities in a county are 75% occupied by residents who are documented to be under the age of 65 years old. In this instance, beds in those facilities will not be counted in the county bed need.
- B. No additional beds will be approved for a county with two (2) or more licensed assisted living facilities when the county has an average occupancy of less than 80% for the previous calendar year, according to data from the DHS Office of Long Term Care.

Even if county's licensed assisted living beds were not at an average of 80% occupancy during the previous calendar year, additional beds may be approved when the total licensed and approved Assisted Living and Residential Care beds are equal to or less than 50% of the county's projected need for assisted living and residential care beds.

*\*This rule will expire on December 31, 2014, by which time the Commission will have data on utilization by age groups for consideration in the methodology.*

### **SECTION IV- SIZE**

#### Maximum Size

A maximum of 75 beds will be awarded to any one applicant per service area, per cycle under the population based methodology

## HSC REGULATION 500M. Assisted Living Methodology (03/0701/12)

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