

ARKANSAS HEALTH
SERVICES PERMIT
AGENCY

COVER LETTER

NURSING FACILITY
SECTION ONLY

MARK-UP

ARKANSAS

PERMIT OF APPROVAL

RULEBOOK

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HSC Regulation 100M Nursing Home Facility Bed Methodology~~(04/09)~~

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 ~~(PROJECTED TO 2014)~~

- A. Population Based Methodology calculates the projected nursing facility ~~home~~-bed need using estimated population data for four age groups (see below) for a service area (county). Need is projected five years forward ~~from the current State Fiscal Year~~ 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% ~~80%~~ for the most recently available occupancy as reported by DHS and as reflected in the current quarterly published Bed Need Book.

- ~~C. Exceeding Projected Net Need. The Agency may exceed the projected net "need" when the projected net "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).

- D. ~~Exception to Occupancy Requirement. 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.~~

II. UTILIZATION BASED METHODOLOGY

- A. ~~Nursing homes may acquire up to 10% of its licensed capacity or 10 beds, whichever is greater, if the applicant nursing home. 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 ~~occupancy 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 had no Approved but Unlicensed Beds during the previous 12 month period and~~
3. proposes to acquires beds from a facility that averaged 70% ~~80%~~ 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. ~~is located in a county without a Population Based need and~~
54. 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 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 ~~occupancy census~~ as reported by DHS for at least four (4) months of the last six (6) month period; and

~~2. currently has no approved but unlicensed beds and had no approved but unlicensed beds during the previous State fiscal year;~~

23. is located in a county without a Population Based "need"; and

3. proposes to acquire beds from a facility that averaged less than 70% 80% 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 ~~IV-E and F-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.

~~D. In any county where every nursing home facility in the county has an occupancy rate of at least 90.0%, and there is no population-based need, an applicant may add 10% of their licensed capacity or 10 beds, which ever is greater, if the facility currently has no approved but unlicensed beds and had no approved but unlicensed beds during the previous State fiscal year.~~

III. REPLACEMENT OF FACILITIES AND BEDS

A. Qualified applicants would be applicants who propose to replace existing beds with "new construction."~~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,~~or the relocation of existing beds into a newly constructed facility.~~

This ~~section prohibits the~~ 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. ~~Except as otherwise provided in this Subsection, applicants cannot combine any criteria to increase existing licensure by more than 20%. The sole exception is 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. The Applicant must acquire the additional beds from a facility that averaged less than 80% 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 80%- 93% or more for the most recently available occupancy as reported by DHS the quarterly published Bed Need Book.

IV. APPLICATION APPROVAL PRIORITIES

- A. ~~In any one review cycle, for all applications submitted under sections I and III of this methodology, only one (1) application may be approved for each county. For example, if there are two (2) applications submitted under section I and one (1) application submitted under section III for the~~

~~same county, only one of the three applications may be approved in any one review cycle. 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. ~~With respect to applications submitted under section II, one application per county may be approved per review cycle, in addition to the one (1) application to be approved as described in section IV. A.1. 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.

~~Beds-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.~~

~~The maximum number of beds awarded to existing facility applicant(s) pursuant to this priority in a single review cycle shall be 35.~~

2. ~~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 (2) 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 approval 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; 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;

34. 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.

45. 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 ~~out of state~~ applicant's compliance and enforcement history in determining whether to grant a Permit of Approval.

NOTE: 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.)

V. Lifecare Nursing Facility (10/02)

The Arkansas Health Services Commission and the Arkansas Health Services Agency amend their rules, policies, and procedures in relation to applications for long-term care facilities as follows:

A. Continuing care providers, as established by the Arkansas General Assembly and codified in A.C.A. 23-93-101 - 23-93-114 and regulated by the Arkansas Insurance Commissioner, shall be governed by the statutory and regulatory provisions relating to applications for long-term care facilities.

B. Continuing care "life care providers", as established by the Arkansas General Assembly and codified in A.C.A. 23-93-201 et seq., regulated by The Insurance Commissioner of Arkansas and requiring no additional charges for nursing care or personal care services beyond those charged all residents of the facility who are not receiving nursing care or personal care services, shall be governed by statutory and regulatory provisions relating to applications for long-term care facilities, except:

1. After issuance of a license by the Department of Insurance as a "life care provider", the life care provider may apply for a Permit of Approval for a nursing facility based on one bed per ten constructed, licensed units occupied by bona fide residents upon a signed agreement that no individual will be directly admitted to the nursing facility who has not been a bona fide resident of the life care provider.

2. (i) Additional beds for the life care provider nursing facility may be requested on an annual basis, provided it is in compliance with and has a current license from the Department of Insurance and the Office of Long Term Care, based on one bed per additional ten constructed, licensed units occupied by bona fide residents of the life care provider which have been constructed, licensed, and occupied by bona fide residents and in existence for at least twelve (12) months from the last application under this sub-section, and based on the occupancy of the nursing facility during the previous twelve months, requiring the previous twelve months, until the nursing facility reaches a total of seventy (70) beds, and provided no individual has been admitted to the nursing facility who had not been a bona fide resident of the life care provider. The life care provider shall furnish the Health Services Agency all information requested to substantiate the application. or

(ii) Additional beds for the life care provider nursing facility may be requested on an annual basis, if no new constructed, licensed units have been added to the life care provider, based on the utilization of the nursing facility during the previous twelve months, requiring seventy percent (70%) occupancy over the previous twelve

months, and shall entitle the life care provider, provided it is in compliance with and has a current license from the Department of Insurance and the Office of Long Term Care, to an additional ten beds, or ten percent (10%), whichever is greater, until the nursing facility reaches a total of seventy (70) beds, provided no individual has been directly admitted to the nursing facility who has not been a bona fide resident of the life care provider. The life care provider shall furnish the Health Services Agency all information requested to substantiate the application.

(iii) Only one of these methods may be used in a calendar year.

3. Should the life care provider's license be revoked by the Arkansas Department of Insurance, this Commission shall recommend to the Office of Long Term Care that the nursing facility lose its license to own and operate a nursing facility. Should a life care provider nursing facility directly admit residents who have not been bona fide residents of the life care provider to the nursing facility, the life care provider shall not be allowed to apply for new beds for a total of five (5) years.

4. The nursing facility or beds of a life care provider shall not be sold or transferred to any other entity. Any sale or transfer shall automatically forfeit the license of the facility or beds and bar the life care provider from applying for additional beds for ten (10) years.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Health Services Permit Agency (AHSPA)
DIVISION Arkansas Health Services Permit Agency (AHSPA)
PERSON COMPLETING THIS STATEMENT Traci Harris
TELEPHONE NO. 501-661-2509 FAX NO. 501-661-2399 EMAIL: Traci.Harris@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE HSC Regulation 100M Nursing Facility Bed Methodology

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☐ No ☒
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes ☒ No ☐
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☒ No ☐

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;
- (b) The reason for adoption of the more costly rule;
- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;
- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

- (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue N/A
Federal Funds N/A
Cash Funds N/A
Special Revenue N/A
Other (Identify) N/A

Next Fiscal Year

General Revenue N/A
Federal Funds N/A
Cash Funds N/A
Special Revenue N/A
Other (Identify) N/A

Total N/A

Total N/A

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue N/A
Federal Funds N/A
Cash Funds N/A
Special Revenue N/A
Other (Identify) N/A

Total N/A

Next Fiscal Year

General Revenue N/A
Federal Funds N/A
Cash Funds N/A
Special Revenue N/A
Other (Identify) N/A

Total N/A

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ N/A

Next Fiscal Year

\$ N/A

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ N/A

Next Fiscal Year

\$ N/A

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes ☐ No ☒

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and

(b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.