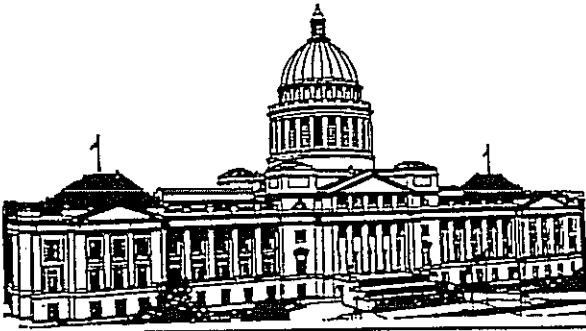


ARKANSAS REGISTER

Transmittal Sheet



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

For Office Use Only: Effective Date 5/28/98 Code Number 049.00.98--002

Name of Agency HEALTH SERVICES AGENCY

Department N/A

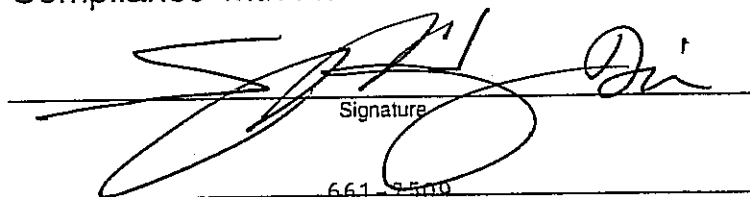
Contact Person Nancy Richardson Phone 661-2197

Statutory Authority for Promulgating Rules Arkansas Act 593 of 1987, as amended

	Date
Intended Effective Date	Legal Notice Published <u>March 27-29, 1998</u>
<input type="checkbox"/> Emergency	Final Date for Public Comment <u>April 28, 1998</u>
<input checked="" type="checkbox"/> 10 Days After Filing	Filed With Legislative Council <u>March 25, 1998</u>
<input type="checkbox"/> Other	Reviewed by Legislative Council <u>May 8, 1998</u>
	Adopted by State Agency <u>April 28, 1998</u>

CERTIFICATION OF AUTHORIZED OFFICER

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


Signature

661-2500
Phone Number

Agency Director
Title

May 8, 1998
Date

FILED
ARK. REGISTER DIV.
98 MAY 18 AM 9:16
BY
SECRETARY OF STATE
STATE OF ARKANSAS

FILED
AR. REGISTER DIV.

98 MAY 18 AM 9:16

DEPARTMENT OF REVENUE
SECRETARY OF STATE
STATE OF ARKANSAS

ARKANSAS HEALTH SERVICES COMMISSION

BY _____

FINANCIAL IMPACT STATEMENT

HSC Regulation 100M.A1 Nursing Home Bed Need Methodology (as amended 4/98).

Contact person: Nancy Richardson
Health Services Agency
Freeway Medical Tower
5800 West 10th Street, Suite 805
Little Rock, Arkansas 72204

1. Does this proposed, amended, or repealed rule or regulation have a financial impact?

Yes No

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

It will not require any additional appropriation and will not require any additional expenditures by applicants.

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.

N/A as this is not a federal rule or regulation.

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

1995-96 Fiscal Year 1996-97 Fiscal Year

None outside of the \$500 review fee.

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

None.

HSC REGULATION 100M.A1
Nursing Home Bed Need Methodology (4/98)

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AR. REGISTER DIV.
98 MAY 18 AM 9:17

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.

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% 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 and more than 60 licensed beds would be eligible for a 10 bed increase.

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).

*An "older facility" is one which had 50% 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.

II. UTILIZATION BASED

- A. Nursing homes may add up to 10% of their licensed capacity or 10 beds whichever is greater, 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. 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 fiscal year (see p. 1 introductory remarks).
- B. Nursing homes with less than 60 licensed beds could be approved to expand to 70 beds, 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. 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 fiscal year (see p. 1) introductory remarks).

III. REPLACEMENT OF OLDER FACILITIES

- A. Qualified applicants would be facilities which had at least 50% of their present beds licensed before July 1, 1974 and would propose to replace their existing facility. Each applicant would be approved for up to a 20% increase of their present licensed capacity.
 - B. Qualified applicants may apply under the 10% criterion (96.0% O.R.) and the 20% (Pre-1974) criterion or the Population Based criterion and the 20% (Pre-1974) criterion but the criteria cannot be combined 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.
-

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 bed units only in order to comply with specific regulations for intensive care and/or sub-acute care units said regulations to be promulgated by the Office of Long Term Care of the Arkansas Department of Human Services,
- B. does not include a sprinkler system under regulations promulgated by the Office of Long Term Care of the Arkansas Department of Human Services. (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 be a poor performing facility by the Office of Long Term Care in the following areas in two of its last three (3) annual surveys:
 - 1. Resident Behavior and Facility Practices
 - 2. Quality of Care or
 - 3. Quality of Life

The preferred bed size is a range from 70 to 140 beds. Any deviation will require special consideration by the Commission.

NOTE: Occupancy data on Medicaid certified facilities will be based on the report supplied by the Office of Long Term Care to the Health Services Agency. Occupancy data on facilities that did not report to the Office of Long Term 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.)

V. Lifecare Nursing Facility

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, an occupied by bona fide residents and in existence for at least twelve (12) months from the last application under this subsection, 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 life care provider, based on the utilization of the nursing facility during the previous twelve months, requiring ninety-six percent (96%) 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.
5. Nursing facility beds of a life care provider shall not be counted when computing bed need for a county, as they are not available to the public.

HSC REGULATION 100M.A1
Nursing Home Bed Need Methodology (4/98)

POPULATION BASED FORMULA

This methodology projects nursing home bed need using the 1998 estimated population in four age groups (see below) of a service area (county):

AGE GROUP	BEDS PER 1000 POPULATION
Below 65	1.16
65 to 74	13.92
75 to 84	53.87
85 and above	204.98

NOTE: The projection for a county represents the number of patients estimated to need beds. Since all nursing homes cannot be expected to operate at 100% occupancy year round, 5% additional beds are added to the initial projection to allow for patient fluctuation, i.e. the initial projection (using the above mentioned bed figures) represents 95% of the total beds needed.