

January 4, 2008

Mr. Jon Davidson  
Arkansas Register  
State Capitol, Room 026  
Little Rock, AR 72201

Dear Mr. Davidson:

At a meeting on Thursday, December 13, 2007, The Health Services Permit Commission voted to adopt the following rule changes and on January 3, 2008 Legislative Rules and Regulations Committee reviewed the changes:

- 1) Changes to the Hospice Methodology – 400M

I am sending the transmittal forms, financial impact statements and copies of the rules within this document on the pages to follow.

Please contact me if you have any questions.

Sincerely,

Jason Lyon  
Management Project Analyst  
501-661-2509



## **NOTICE OF RULEMAKING**

Pursuant to Arkansas Code Annotated § 25-15-201 et seq., notice is hereby given that the Arkansas Health Services Permit Agency is considering proposed additions and changes to its Rules and Regulations. A public hearing will be held on Thursday, December 14, 2007 at 10:00 am in Little Rock, AR. Written comments from the public will be accepted in advance of the meeting if received by November 10, 2007 at 4:30 p.m. Written comments should be mailed to the Agency at 5800 W. 10<sup>th</sup> St., Suite 805, Little Rock, AR 72204. The proposed additions and changes to the Rules and Regulations consist of changes to the Hospice Methodology. Copies of the proposed changes may be obtained at the Agency and at [www.arhspa.org](http://www.arhspa.org) and are available for public inspection.

## **NOTICE OF RULEMAKING**

Pursuant to Arkansas Code Annotated § 25-15-201 et seq., notice is hereby given that the Arkansas Health Services Permit Agency is considering proposed additions and changes to its Rules and Regulations. A public hearing will be held on Thursday, December 13, 2007 at 10:00 am in Little Rock, AR. Written comments from the public will be accepted in advance of the meeting if received by November 10, 2007 at 4:30 p.m. Written comments should be mailed to the Agency at 5800 W. 10<sup>th</sup> St., Suite 805, Little Rock, AR 72204. The proposed additions and changes to the Rules and Regulations consist of changes to the Hospice Methodology. Copies of the proposed changes may be obtained at the Agency and at [www.arhspa.org](http://www.arhspa.org) and are available for public inspection.

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

<b>DEPARTMENT/AGENCY</b>	Arkansas Health Services Permit Agency
<b>DIVISION</b>	
<b>DIVISION DIRECTOR</b>	Deborah Frazier
<b>CONTACT PERSON</b>	Jason Lyon
<b>ADDRESS</b>	5800 W. 10 <sup>th</sup> , Suite 805, Little Rock, AR 72204
<b>PHONE NUMBER</b>	501-661-2509 <b>FAX NO.</b> 501-661-2399 <b>E-MAIL</b> Jason.Lyon@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 attached to the front of two (2) copies of your proposed rule and mail or deliver to:

**Donna K. Davis**  
**Subcommittee on Administrative Rules and Regulations**  
**Arkansas Legislative Research**  
**Bureau of Legislative Research**  
**Room 315, State Capitol**  
**Little Rock, AR 72201**

\*\*\*\*\*

- 1. What is the short title of this rule?  
  
HSC REGULATION 400M. Hospice Methodology
- 2. What is the subject of the proposed rule?  
  
Need Methodology for Hospice Agencies and enforcement history of Hospice agency
- 3. Is this rule required to comply with federal statute or regulations? Yes  No   
  
If yes, please provide the federal 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 regular 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 markup 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 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?

This change seeks to update the current methodology to be more in line with National averages that the rule was originally in-line with. Original national average was 25% and now the average is 33% according to most recent data available.

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

If yes, please complete the following:

Date: December 13, 2007

Time: 10:00 A.M.

Place: State Police Headquarters, I-30 and Geyer Springs, Little Rock, AR or TBD

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

November 10, 2007

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

December 15, 2007 or 10 days after it is filed as a final rule.

11. Do you expect this rule to be controversial? Yes  No  If yes, please explain.

12. 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.

Names	Category	For	Against
Arkansas Hospital Association	Trade	<input type="checkbox"/>	<input type="checkbox"/>
Arkansas Home Care Association	Trade	<input type="checkbox"/>	<input type="checkbox"/>
Arkansas State Hospice Association	Trade	<input type="checkbox"/>	<input type="checkbox"/>



**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT:** \_\_\_\_\_ Arkansas Health Services Permit Agency

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

**PERSON COMPLETING THIS STATEMENT:** \_\_\_\_\_ Jason Lyon

**TELEPHONE NO.:** 5016612509    **FAX NO.:** 5016612399    **EMAIL:** Jason.Lyon@Arkansas.gov

**FINANCIAL IMPACT STATEMENT**

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 400M. Hospice Need Criteria

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 prohibitive, please explain.

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

**Current Fiscal Year**

**Next Fiscal Year**

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

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

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

**Current Fiscal Year**

**Next Fiscal Year**

\$00.00 \_\_\_\_\_  
\$ \_\_\_\_\_  
\$ \_\_\_\_\_  
\$ \_\_\_\_\_

\$0.00 \_\_\_\_\_  
\$ \_\_\_\_\_  
\$ \_\_\_\_\_  
\$ \_\_\_\_\_

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

**Current Fiscal Year**

\$000.00

\_\_\_\_\_

**Next Fiscal Year**

\$

\_\_\_\_\_

## **HSC REGULATION 400M. Hospice Methodology (12/07)**

**HOSPICE CARE** as defined by state statute means an autonomous, centrally administered, medically directed, coordinated program providing home and outpatient care for the terminally ill patient and family, and which employs an inter-disciplinary team to assist in providing palliative and supportive care to meet the special needs arising out of the physical, emotional, spiritual, social and economic stresses which are experienced during the final stages of illness and during dying and bereavement. The care shall be available twenty- four (24) hours a day, seven (7) days a week, and provided on the basis of need, regardless of the ability to pay.

**HOSPICE PROGRAM** -Hospice program is defined as a public agency or private organization or subdivision or either of these that is primarily engaged in providing care to terminally ill individuals (Code of Federal Regulations, Title 42, Volume 2, Part 418).

**HOSPICE FACILITY** - A Hospice Facility is defined as a facility that houses hospice beds licensed exclusively to the care of terminally ill patients but not beds licensed to a hospital, nursing home or other assisted living or residential facilities. It can provide any of the four levels of hospice care. For purposes of this application, terminally ill patients are defined according to the Social Security Act as those individuals with a terminal diagnosis and a prognosis of six months or less if the diagnosed condition runs its normal course.

### Hospice Agencies

This rule regulates the establishment of new hospice agencies and the expansion of existing hospice service areas.

#### A. NEED

1. The projected number of hospice patients will be 30% of the average of the total deaths that occurred in the county for the four most recent years available as calculated by the Center for Health Statistics.
2. Numeric need for a new hospice is demonstrated if the projected number of patients eligible for hospice per calendar year is 35 or greater in the proposed service area (or expanded area).\* The projections for the proposed area would have to indicate a need for 35 or more after the deaths for the existing hospices for the previous four quarters have been subtracted out from the total projected hospice patients.

*\* The service area is the county.—*

#### B. REQUIREMENTS:

Applicants are required to provide a business plan including:

1. Documentation of financial support to provide cost efficient hospice care as measured by industry standards and published by The National Hospice and Palliative Care Organization or The National Association of Home Care and Hospice.
  2. A potential office location in the county in which the applicant is applying for a Permit, or documentation that research into a location for an office has been done, with the amount of rent reflected in the budget. An exception exists if an applicant has a hospice office in a contiguous county; in this case, the existing hospice office can serve as the address for the new application.
  3. A plan to educate physicians, hospital discharge planners and other appropriate health and social service providers about the need for timely referral of potential hospice patients.
  4. Agreement to provide timely and accurate reporting data to the Health Services Permit Agency as requested.
- C. Regardless of numeric need, no new hospice agency will be approved unless hospice death data from the last eight quarters for each hospice agency servicing the proposed service area has been available for publishing by the Agency. This provision does not prohibit approval where a new license was granted to an Agency that purchased a hospice agency that had been serving the area for more than two years.

D. Unfavorable Review

1. The Agency may consider an applicant's in-state and out-of-state compliance and enforcement history in determining whether to grant a Permit of Approval.
2. No hospice application will be approved if the applicant has had any condition level deficiencies in the previous 36 months as determined by the applicable state survey agency unless the state survey agency has documented that the deficiency was corrected at least 12 months prior to the application submission.