

## HSC Regulation 100M Nursing Home Bed Methodology (12/08)

~~All dates contained herein, (with one exception see below), will move forward one year each July 1, e.g. on July 1, 1998, the date 2002 which is listed under "I. Population Based Methodology" will move forward to 2003.~~

### 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 home bed need using estimated population data for four age groups (see below) for a service area (county). **Need is projected five (5) years forward from the current State Fiscal Year using the most recent data available from the UALR Institute of Economic Advancement.** **No change from original. Last sentence reworded to mirror language in ALF Population Based Methodology.**

#### AGE GROUP BEDS PER 1000 POPULATION

Below 65	.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 80% for the most recently available occupancy as reported by DHS. **[Moved from original Section I, Paragraph 2].**

**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). **[Moved from original Section I, B.]**

**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. **[Moved from original Section I, C.]**

**[ This section below was moved to create a new Section called “IV. APPLICATION APPROVAL PRIORITIES”].**

~~In order to qualify for additional beds, counties showing a “need” under this section must have had an overall occupancy of at least 80% for the most recently available occupancy as reported by DHS. 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 most recently available occupancy as reported by DHS. 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 facilities 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.~~

~~(1) 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).~~

~~(2) 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:

1. averaged 90.0% or greater occupancy according to the most recent 12 month occupancy data available from DHS **and**
2. currently has no Approved but Unlicensed Beds and had no Approved but Unlicensed Beds during the previous 12 month period **and**
3. acquires beds from a facility that averaged 70% or less occupancy for the previous 12 month period **according to the most recent 12 month occupancy data available from Dept. of Human Services and**
4. is located in a county without a Population Based need and
5. ~~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 state fiscal year~~
5. has not acquired beds pursuant to this Subsection II. A. in the previous 12 month period.

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 as reported by DHS.
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 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 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.

~~2. 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 state fiscal year~~ [ **Moved to Unfavorable Review** ]

### III. REPLACEMENT OF FACILITIES AND BEDS

A. Qualified applicants would be applicants who propose to replace existing beds with “new construction.”

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.

B. Applicants may be approved for up to a 20% increase of their present licensed capacity when replacing a facility under this Subsection. 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 .

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 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% or more for the most recently available occupancy as reported by DHS.

### 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.

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.

**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, provided all requirements for approval of the application(s) are met.

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;**

3. 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.

4. **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

~~No application for beds will be approved that:~~

### **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. ~~does not include a sprinkler system and generator under regulations promulgated by the Department of Human Services, Office of Long Term Care. (This applies to new facilities only);~~
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.**
4. will cause a facility to exceed 140 beds, or
5. will create a facility with fewer than 70 beds. ~~Any deviation will require special consideration by the Commission.~~
6. would create an under-served area. The Commission will make this determination.
7. ~~No applicant will be approved for additional beds if it is 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 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.~~
- H. ~~1. In any one review cycle, for all applications submitted under sections I and III of this methodology, only one (1) application may be approved per~~

~~county. For example, if there are two (2) applications submitted under section I and one (1) application submitted under section III, only one of the three applications may be approved in any one review cycle. [ This section moved to the new “Section IV. Application Review Priorities”, Section B.]~~

~~H. 2. 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.H.1. [ This section moved to the new “Section IV. Application Review Priorities”, Section B.]~~

B. An application for a POA will be denied if the owner/operator 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: 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.

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.

#### POPULATION BASED FORMULA (04/03)

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

#### AGE GROUP BEDS PER 1000 POPULATION

Below 65 .66

65 to 74 10.8

75 to 84 42.97

85 and above 182.5

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.