

EXHIBIT F

Request for Governor's Approval of Proposed Rules and Regulations

Department/Agency: Arkansas Health Services Permit Agency (AHSPA)

Short Title of Rule: HSC Regulation 100M Nursing Facility Bed Methodology

New Rule: Yes No ✓

Amendment to Existing Rule: Yes ✓ No

State Mandate: Yes No ✓

Federal Mandate: Yes No ✓

If yes, please provide the rule, regulation, and/or statute citation:

Authority to Promulgate the Rule: Ark. Code Ann. 20-8-101

Proposed Effective Date: January 1, 2017

Emergency Rule: Yes No ✓

Expedited Rule Requested: Yes No ✓

Summary of Proposed New Rule or Proposed Amendment to Existing Rule:

To modify the existing Nursing Facility bed methodology in the AHSPA Rulebook. To provide regulations that will limit the creation of new nursing home beds due to population growth in the state. The proposed amendment raises the occupancy rate requirement for counties in the population based methodology. Revises the replacement of nursing facilities and beds and utilization methodology to no longer increase total nursing facility beds in the state. And the revision of the prioritization of nursing facility beds emphasizing redevelopment of current facilities to benefit residents.

Financial Impact: Yes No ✓ Unknown; if yes or unknown, please explain:

Public Hearing: Yes No ✓

Controversial: Yes No ✓

Documents Required for Approval Process

Please note that the Governor's office will not begin the approval process if any of the following applicable documents are not enclosed with the approval request.

- BLR Questionnaire
- BLR Financial Impact Statement
- Proposed Rule – clean version
- Mark-Up of Rule, if amended from previous version
- Copy of Act or Regulation, if Rule is pursuant to State or Federal mandate

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

DEPARTMENT/AGENCY Arkansas Health Services Permit Agency (AHSPA)
DIVISION N/A
DIVISION DIRECTOR Tracy Steele
CONTACT PERSON Traci Harris
ADDRESS 5800 West 10th Street Suite 805
PHONE NO. 501-661-2509 FAX NO. 501-661-2399 E-MAIL traci.harris@arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Tracy Steele
PRESENTER E-MAIL Tracy.Steele@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
One Capitol Mall, 5th Floor
Little Rock, AR 72201**

- 1. What is the short title of this rule? HSC Regulation 100M Nursing Facility Bed Methodology
- 2. What is the subject of the proposed rule? Nursing Facility Bed Methodology
- 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 the Arkansas Code citation. Ark. Code Ann. 20-8-101

7. What is the purpose of this proposed rule? To modify the existing Nursing Facility bed methodology in the AHSPA Rulebook. To provide regulations that will limit the creation of new nursing facility beds due to population growth in the state. Why is it necessary? This rule is being proposed to meet the AHCA /DHS MOU requirements.

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: _____

Time: _____

Place: _____

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

December 27, 2016.

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

January 31, 2017.

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

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 Health Care Association- for; Department of Human Services- for

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

Next Fiscal Year

General Revenue N/A

General Revenue N/A

Federal Funds N/A

Federal Funds N/A

Cash Funds N/A

Cash Funds N/A

Special Revenue N/A

Special Revenue N/A

Other (Identify) N/A

Other (Identify) N/A

Total 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

Next Fiscal Year

\$ N/A

\$ 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

Next Fiscal Year

\$ N/A

\$ 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.

SUMMARY FOR NURSING FACILITY METHODOLOGY CHANGES

Section I.

The occupancy threshold to qualify for Population Based need was set at 80%. The signed Memorandum of Understanding between the Department of Human Services and the Arkansas Health Care Association and Governor Hutchinson's primary objective is to limit the addition of new nursing facility beds based on a population increase. The occupancy threshold is to be raised to 93%. The higher threshold will assure the Governor that no additional nursing facility beds would be issued for at least 10 years.

With the current threshold of 80%, 15 counties are eligible for the addition of beds under population based need. With this change to 93%, no counties will be eligible.

Section II. A

This proposed change of moving from 10% of licensed capacity or 10 beds whichever is greater to up to 25 beds (regardless of projected need in the county) will increase the number of beds a nursing facility may acquire in order to allow competitive facilities to host more clients if they meet the utilization based methodology requirements. The requirements are listed below.

1. averaged 90.0% or greater occupancy according to the most recent 12 month 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
3. proposes to acquire 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. *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 may not be transferred back or returned to the original facility unless all the requirements of this section Part II. A. are satisfied.

The changes in the utilization based methodology requirements will be to complete a review of census data for at least four months of the last six months to assist those facilities where their occupancy fluctuates during the year; to acquire beds from facilities that average less than 70% than the current 80% occupancy for the previous 12 months. The percentage has been reduced to prevent those facilities with better occupancy rates from having to have a waitlist if they were to lose beds.

Section II. B.

This proposed change for nursing homes with less than 60 licensed beds could be approved to expand to 70 beds, if the facility met the above listed utilization based methodology requirements.

The Section II A. and B. changes do not allow an increase to the total number of nursing facility beds in the state.

Section III. A. B. & D.

The change in the Replacement of Facilities and Beds section allows qualified applicants to replace an existing licensed facility with “new” construction. Additional beds must be acquired from a facility that averaged less than 70% occupancy instead of 80% for the last 12 month period. Applicant may also apply to transfer existing licensed beds within the same county to be licensed in the replacement facility but the increase in beds by transfer shall not impact the calculation of the 20% increase of existing licensed beds in the applicant facility. Change in the average overall occupancy to 93% instead of 80% for the receiving county where beds are being moved.

These changes to Section III allow for facilities to be renovated and additional beds to be added but new beds come from underutilized facilities and are not taken from the bed pool. No longer increasing the total number of nursing facility beds in the state.

Section IV.

This change addresses the addition of priority #2 - of beds available being allocated to applicants who propose to add beds to an existing licensed facility under Utilization Review, Section II application approval provided all requirements for approval of the application are met.

Section V.

The changes in Section V enables facilities with OLTC deficiencies to not be penalized from having their application being reviewed if they are in the process of correcting a deficiency; places the number of “Beds in Transition” into the count with Approved but Unlicensed beds in the 10% rule; and expands the review of past abandonment history to not just owner/operator but also the majority of a facilities controlling members.

SUMMARY FOR NURSING FACILITY METHODOLOGY CHANGES

Section I.

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This proposed change of moving from 10% of licensed capacity or 10 beds whichever is greater to up to 25 beds (regardless of projected need in the county) will increase the number of beds a nursing facility may acquire in order to allow competitive facilities to host more clients if they meet the utilization based methodology requirements. The requirements are listed below.

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Once relocated and licensed to the acquiring facility, beds may not be transferred back or returned to the original facility unless all the requirements of this section Part II. A. are satisfied.

The changes in the utilization based methodology requirements will be to complete a review of census data for at least four months of the last six months to assist those facilities where their occupancy fluctuates during the year; to acquire beds from facilities that average less than 70% than the current 80% occupancy for the previous 12 months. The percentage has been reduced to prevent those facilities with better occupancy rates from having to have a waitlist if they were to lose beds.

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This proposed change for nursing homes with less than 60 licensed beds could be approved to expand to 70 beds, if the facility met the above listed utilization based methodology requirements.

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