

Title 20. Public Health and Welfare

Chapter III. Health Services Permit Agency, Department of Health

Subchapter A. Generally

Part 255. Health Services Permit Agency Rules

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"December 2012"

Subpart 1. Health Services Permit Commission Policies and Procedures

Codification Notes. This subpart as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"HSC Rule 001. Health Services Permit Commission Policies and Procedures (10/09)"

20 CAR § 255-101. Introduction.

(a) Organization.

(1) The Health Services Permit Commission, hereinafter referred to as the commission, and the Health Services Permit Agency, hereinafter referred to as the agency, are governed by Arkansas Code § 20-8-101 et seq.

(2) The administrative offices for the commission are located at Mosaic Templars State Temple, 906 Broadway, Suite 200, Little Rock, Arkansas.

(b) Officers.

(1) **Number.** Officers of the commission shall be a chair and a vice chair.

(2) Terms of office.

(A) The terms of the commission chair and vice chair shall be for one (1) year.

(B) Officers may succeed themselves.

(3) Chair.

(A) The chair shall have general supervision and management of the affairs of the commission subject to the control of the members.

(B) He or she shall chair all meetings of the members and perform:

(i) All duties incidental to the office of the chair; and

(ii) All such other duties as from time to time may be assigned by the members.

(4) Vice chair.

(A) The vice chair shall in the absence or disability of the chair, perform the duties and exercise the powers of such office.

(B) The vice chair shall perform such other duties and have such other powers as the chair or the members may from time to time prescribe.

(c) Meetings.

(1) Notice of meetings.

(A) Formal notice of regular quarterly meetings should be communicated to members at least ten (10) working days prior to the meeting and additionally the news media and those who formally request notice from staff.

(B) The agenda for the meeting should be approved by the chair and provided to the members, along with supporting materials, in sufficient time to permit review prior to a regular quarterly meeting.

(2) Special meetings.

(A) Special meetings of the commission may be required from time to time.

(B) Such meetings are subject to call of the chair, the vice chair, or three (3) or more members.

(C) The call to a special meeting should state the location and time, and the subject matter to be covered at such meeting.

(D) The call to a special meeting should be provided to members at least twenty-four (24) hours prior to the meeting.

(3) Quorum and manner of action.

(A) A quorum shall be not less than five (5) of the duly appointed members of the commission.

(B) All actions of the commission shall be decided by a simple majority of the members present and voting but no action may be taken without four (4) votes for or against a motion with no proxy voting permitted.

(4) **Robert's Rules of Order.** Unless otherwise covered by the policies and procedures of the commission, the latest edition of Robert's Rules of Order shall govern the conduct of any meeting.

(5) **Written minutes.** The minutes of meetings shall be prepared and kept by agency staff and written copies mailed to members.

(d) **Committees of the commission.**

(1) The chairperson may establish and create from time to time such committees as shall be necessary to carry out the affairs and further the purposes of the commission.

(2) The commission may have:

(A) Standing committees;

(B) Ad hoc committees; or

(C) Any other committees determined by the chairperson.

(3) The chairperson shall appoint the membership to all committees.

(e) **Conflict of interest.**

(1) **Announcing a conflict of interest.**

(A) No member of the commission shall use such membership for purposes which are motivated by private gain including gain for organizations or institutions with which the individual is associated in any capacity.

(B) Annually a disclosure statement shall be filed with the agency listing:

(i) All professional interests in the health field;

(ii) Any financial interest in the health industry; and

(iii) Any fiduciary interest held in a health institution, organization, or

agency.

(C) There shall be a conflict of interest when the member or his or her organization or institution is the applicant or is a party to the adjudication process.

(D) When a conflict arises for a member in the course of business of the commission, the individual member should declare the conflict.

(2) **Voting abstention.** Any member who declares a conflict of interest, or who is found to have a conflict should neither participate in debate nor vote on the issue in question.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

20 CAR § 255-102. Definitions.

As used in this subpart:

(1) "Affected person" includes, at a minimum:

(A) The applicant;

(B) Appropriate state agencies;

(C) Any person residing within the proposed service area or any person who regularly uses healthcare facilities within the proposed service area who has notified the Health Services Permit Agency in writing requesting notification of the review;

(D) Healthcare facilities located in the service area in which the project is proposed to be located; and

(E) Legal representatives of such persons;

(2) "Agency" means the Health Services Permit Agency;

(3)(A) "Assisted living facility" means any building or buildings, section or distinct part of a building, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide assisted living services for a period exceeding twenty-four (24) hours to more than three (3) adult residents of the facility who are not relatives of the owner or administrator.

(B) Assisted living facility includes those facilities which provide assisted living services either directly or through contractual arrangements or which facilitate contracting in the name of residents;

(4) "Commission" means the Health Services Permit Commission;

(5) "Commissioner" means a duly appointed member of the Health Services Permit Commission;

(6) "Conversion of services" means an alteration of the category of services offered by a health facility;

(7) "Director" means the director of the Health Services Permit Agency;

(8)(A) "Health facility or health facilities" means "a long-term care facility" as defined by Arkansas Code § 20-10-101(10), the Long Term Care Facilities and Services Act, or a "home healthcare services agency" as defined by Arkansas Code § 20-10-801, the Home Services Act.

(B) The terms "health facility" or "health facilities" does not mean a "hospital", as defined by and licensed pursuant to Arkansas Code § 20-9-201(4) the Hospital and Health Facilities Licensure Act.

(C) Nothing in the act or this part shall be deemed to require a permit of approval for or otherwise regulate the licensure of in any manner of a hospital except when a hospital seeks to:

(i) Add long-term care beds or convert acute beds to long-term care beds; or

(ii) Add or expand home health services.

(D) The term "health facility" does not include:

(i) Offices of private physicians;

(ii) Outpatient surgery;

(iii) Imaging centers;

(iv) Establishments operated by the federal government or any agency thereof;

(v) Free-standing radiation therapy centers; or

(vi) Any facility which is conducted by and for those who rely exclusively upon treatment by prayer alone for healing in accordance with the tenets or practices of any recognized religious denomination;

(9)(A) "Home health agency" means nothing in the act or this part shall be deemed to require a permit of approval for or otherwise regulate the licensure of in any manner of a hospital except when a hospital seeks to add long-term care beds or convert acute beds to long-term care beds or add or expand home health services.

(B) The term "health facility" does not include:

(i) Office of private physicians;

(ii) Outpatient surgery;

(iii) Imaging centers;

(iv) Establishments operated by the federal government or any agency thereof;

(v) Free-standing radiation therapy centers; or

(vi) Any facility which is conducted by and for those who rely exclusively upon treatment by prayer alone for healing in accordance with the tenets or practices of any recognized religious denomination;

(10)(A) "Home health services" means the providing or coordinating of acute, restorative, rehabilitative, maintenance, preventive, or health promotion services through professional nursing or by other therapeutic services such as physical therapy, occupational therapy, speech therapy, home health aide or personal services in a client's residence.

(B) In order to be subject to permit of approval review such services must meet the definitions contained in Acts 1987, No. 956;

(11)(A) "Hospice" or "hospice program" means an autonomous, centrally administered, medically directed, coordinated program providing a continuum of home, outpatient, and home-like inpatient care for the terminally ill patient and family, and which employs an interdisciplinary 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.

(B) The care shall be:

(i) Available twenty-four (24) hours a day, seven (7) days a week;

and

(ii) Provided on the basis of need, regardless of ability to pay;

(12) "Intermediate care facility for individuals with intellectual disabilities"

means:

(A) **Intermediate care facility for individuals with intellectual disabilities, sixteen (16) beds or more.**

(i) A facility with sixteen (16) or more beds that provides in a protective residential setting diagnosis, active treatment, and rehabilitation of persons with intellectual disabilities or persons with related conditions.

(ii) This includes both public and privately operated intermediate care facilities for individuals for with intellectual disabilities.

(B) **Intermediate care facility for individuals with intellectual disabilities, fifteen (15) beds or less.** A facility with from four (4) to fifteen (15) beds that provides in a protective residential setting, diagnosis, active treatment, and rehabilitation of persons with intellectual disabilities or persons with related conditions;

(13) "Life care facility" means continuing care as defined in Arkansas Code § 23-93-103(2) except that no additional charges are made for nursing care or personal care beyond those charged all residents of the facility who are not receiving nursing care or personal care services;

(14) "Long-term care" means nonacute care provided over a twenty-four-hour period for twenty-five (25) or more consecutive days;

(15)(A) "Long-term care facility" means a nursing home, residential care facility, postacute head injury retraining and residential care facility, or any other facility which provides long-term medical or personal care.

(B) Permit of approval review is not required of hospitals as defined by and licensed pursuant to Arkansas Code § 20-9-201(4) except when a hospital seeks to

add long-term care beds or convert acute care beds to long-term care beds or add or expand home health services;

(16) "Medical care" means the services that are performed at the direction of a physician on behalf of patients by physicians, nurses, and other professional and technical personnel;

(17)(A) "Nursing home" means institution, or other place for the reception, accommodation, board, care, or treatment of more than three (3) unrelated individuals:

(i) Who, because of physical or mental infirmity are unable to sufficiently or properly care for themselves; and

(ii) For which reception, accommodation, board, care, and treatment, a charge is made.

(B) The term "nursing home" shall not include:

(i) The offices of private physicians and surgeons;

(ii) Boarding homes;

(iii) Hospitals; or

(iv) Institutions operated by the federal government;

(18) "Permit of approval" means a permit issued by the Health Services Permit Commission, through the Health Services Permit Agency, to an individual, organization, or healthcare facility approving a healthcare project subject to review under:

(A) Acts 2001, No. 1800; and

(B) The rules of the Health Services Permit Commission;

(19) "Person" means:

(A) An individual;

(B) A trust or estate;

(C) A partnership;

(D) A corporation (including associations, joint stock companies, and insurance companies);

(E) The state or a political subdivision or instrumentality (including a municipal corporation) of the state; or

(F) Any legal entity recognized by the state;

(20)(A) "Personal care" means services which are defined as medically prescribed tasks pertaining to a person's functional abilities, which enable the person to be treated on an outpatient basis rather than on an inpatient basis.

(B) Personal care is in no way to be considered medical care;

(21) "Physician" means a doctor of medicine or osteopathy legally authorized by the state to practice medicine and surgery;

(22)(A) "Population of a county" means the population of a county will be based on the most recent federal census unless circumstances are such that the Health Services Permit Commission feels it should look beyond the census.

(B) A statewide planning agency should be utilized which will be the United States Bureau of Census designee;

(23)(A) "Post-acute head injury retraining and residential care facilities" means a building, or group of buildings if located contiguously and operated jointly, used or maintained to provide, for pay, retraining and rehabilitation for three (3) or more individuals who are:

(i) Disabled on account of head injury; and

(ii) Not in present need of inpatient diagnostic care in a hospital or related institution.

(B) Rules and Regulations for Post-Acute Head Injury Retraining and Residential Care Facilities, 29 CAR pt. 407, Office of Long-Term Care, Department of Human Services;

(24) "Psychiatric residential treatment facilities (PRTF)" means twenty-four-hour psychiatric residential treatment establishments with permanent facilities (other than a psychiatric inpatient hospital) which provides a structured, systematic therapeutic program of treatment, under the supervision of a psychiatrist, for emotionally disturbed children and/or adolescents, six (6) to twenty-one (21) years of age, grouped in an age appropriate manner;

(25) "Residential care facilities" means a building or structure which is used or maintained to provide for pay on a twenty-four-hour basis a place of residence and board for three (3) or more individuals whose functional capabilities have been impaired

but do not require hospital or nursing home care on a daily basis, but could require other assistance in activities of daily living; and

(26) "Tangible assets" means, for the purpose of transferring a permit, legal title, and right of ownership, property that may be felt or touched, and is necessarily corporeal, although it may be either real or personal.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

20 CAR § 255-103. Scope of review.

(a)(1) The Health Services Permit Agency (under the direction of the Health Services Permit Commission or appropriate court) will issue, deny, or withdraw permits of approval.

(2) Using the commission's rules and procedures, the agency may exempt appropriate projects from review.

(3) Each recommendation of the agency must be based on the completed application and its relationship to adopted standards and criteria.

(4) Each review decision of the commission must be consistent with adopted standards, criteria, and the record of the review.

(b) Projects requiring permit of approval review include but are not limited to:

(1)(A) Nursing home construction.

(B) All proposals for conversion of services or alteration or renovation or construction having an associated capital expenditure of one million dollars (\$1,000,000) or more;

(2)(A) Additional beds.

(B) Unless exempted by the act or by the commission, all health facilities seeking to add new long-term care (LTC) beds or otherwise expand LTC bed capacity shall apply for a permit of approval;

(3)(A) Home health services.

(B) Unless exempted by the act or by the commission, all health facilities seeking to add home health services or expands existing home health service areas shall apply for a permit of approval.

(C) This includes changes in license designation;

(4)(A) Hospice.

(B) Unless exempted by statute or by the commission, all hospices or hospice programs shall apply for a permit of approval; and

(5)(A) Cost overrun.

(B) Any increase in cost in an approved project or cost of renovation or construction or alteration of a health facility:

(i) Is deemed a cost overrun; and

(ii) Must be documented and filed with the agency.

(C) During the course of review, the reasonableness of the proposed capital expenditure will be evaluated.

(D) A reasonable contingency cost in anticipation of a possible increase in cost due to inflation or other unforeseen factors will be allowed as part of the proposed capital expenditure.

(c) Projects requiring approval by the commission:

(1)(A) Movement of existing long-term care beds.

(B) Any movement of long-term care beds from one (1) site to another site within the service area must be approved by the commission.

(C) The applicant should submit the request in writing to the agency.

(D) Any proposed movement of beds is subject to the time limitations in 20 CAR § 255-106(a) and the reporting requirements of 20 CAR § 255-106(b).

(E) Failure to comply with these requirements will result in the withdrawal of permission to move the beds;

(2)(A) Movement of site location of permit approval.

(B) Any movement of a site location for a project approved by the commission for an existing permit of approval is subject to review.

(C) The applicant shall submit a request to the agency in writing, detailing:

- (i) All information required in the original application regarding a site;
- (ii) The reasons for relocating the site from the original application approved;
- (iii) Any additional costs associated with the relocation; and
- (iv) The time remaining for completion under various rules of the commission regarding implementation of a permit of approval.

(D) The commission, at its next regularly scheduled meeting, must approve the relocation before site location change is made.

(E) The relocation shall not extend the deadline for implementation of a permit of approval; and

(3)(A) Transfer of permit of approval legal title or right of ownership.

(B) A permit of approval may only be transferred:

- (i) If the entity presently holding the permit, legal title, or right of ownership has tangible assets of at least two thousand five hundred dollars (\$2,500) that will be transferred with the permit, legal title, or right of ownership; and

- (ii) With the approval of the commission.

(C) The applicant must provide proof of tangible assets.

(D) Any person requesting approval to receive a permit of approval via transfer from an existing permit holder must submit an application for a permit of approval to the agency in accordance with 20 CAR § 255-105, Procedures for review.

(E) A permit of approval may not be transferred to a county other than the county where the current permit of approval is located unless authorized in the applicable methodology.

(d) Projects exempt from permit of approval process:

(1)(A) Capital expenditures less than adopted thresholds.

(B) Projects proposed for the construction, expansion, or alteration by or on the behalf of a nursing home, which:

(i) Have an associated capital expenditure of less than one million dollars (\$1,000,000); and

(ii) Do not add long-term care beds or home health services;

(2) Hospitals licensed in Arkansas are not subject to review except when a hospital seeks to add long-term care beds or convert acute beds to long-term beds or add or expand home health services;

(3)(A) Conversion of services or new services.

(B) A conversion of services offered in an existing health facility or alteration or renovation of an existing health facility having an associated capital expenditure of less than one million dollars (\$1,000,000) for nursing homes and not resulting in additional bed capacity;

(4)(A) Acquisition of a health facility.

(B) The obligation of a capital expenditure to acquire an existing healthcare facility shall not require a permit of approval.

(C) Such an exemption applies to an acquisition by purchase, lease, donation, or transfer of ownership;

(5)(A) Religious facilities.

(B) Any facility which is conducted by and for those who rely exclusively upon treatment by prayer alone for healing in accordance with the tenets or practices of any recognized religious denomination;

(6) Outpatient surgery centers;

(7) Imaging centers; and

(8) Free-standing radiation therapy centers.

(e) Expedited reviews.

(1)(A) An expedited review is an exception to the normal procedures for permit of approval review.

(B) If a proposal meets the criteria for expedited review (see below) then that application may be submitted at any time without regard to the published batching cycles.

(C) The agency may take action on the proposal thirty (30) days after notice of expedited review has been given to the public.

(2) The expedited review process will be utilized if the capital expenditure is required to:

(A) Eliminate or prevent imminent safety hazards as defined by federal, state, or local fire, building, or life safety codes;

(B) Comply with state licensure standards;

(C) Comply with accreditation or certification standards which must be met to receive reimbursement under Title XVIII of the Social Security Act of 1935, 42 U.S.C. § 1395 et seq., or payments under a state plan for medical assistance approved under Title XIX of the Social Security Act of 1935, 42 U.S.C. § 1396 et seq.;

(D) Eliminate emergency circumstances that pose an imminent threat to public health; or

(E) Increase the cost of an approved project in order to replace remodeling with new construction.

(3) Those portions of a proposed project, which do not comply with subdivision (e)(2) of this section, above, are subject to the full review using established criteria, if that portion would otherwise have been subject to review.

(4) Under no circumstances will additional beds, additional services, or expanded service areas be approved by the agency under the expedited review process.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

20 CAR § 255-104. Criteria for review.

The Health Services Permit Agency and the Health Services Permit Commission will utilize the following criteria in the review process:

(1) Whether the proposed project is needed or projected as necessary to meet the needs of the locale or area;

(2) Whether the project can be adequately staffed and operated when completed;

(3) Whether the proposed project is economically feasible; and

(4) Whether the project will foster cost containment through improved efficiency and productivity.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

20 CAR § 255-105. Procedures for review.

Although review procedures and criteria may vary according to the purpose for which a particular review is being conducted, the normal procedures are as follows:

(1) **Review schedule.**

(A) The review schedule below provides for the review of applications to be considered in the same review cycle.

(B) Applications, which satisfy the requirements for expedited reviews, may be submitted at any time without regard to the established review schedule.

PERMIT OF APPROVAL

Review Schedule

Application submitted by:*	Applications placed under review by:	Agency Decision by:
November 1	December 1	February 28
February 1	March 1	May 30
May 1	June 1	August 30
August 1	September 1	November 30

*Proposed applications should be submitted no later than 4:30 P.M. on this day. This will allow the Health Services Permit Agency one (1) month to determine if the proposed application is complete. If the proposed application is determined complete it will be considered received and will go under review. If the application is not

determined to be complete it will not go under review. The review cycle will not start until the application is declared complete, and official notification has been made placing the application under review. Please note if deadlines fall on a weekend or holiday the deadline will be extended to the next working day.

(2) The application/review process.

(A)(i) The following are the steps of the application process.

(ii) Each step must be completed before a decision on the project can be rendered.

(B) **Application form.** The appropriate application forms must be obtained from the Health Services Permit Agency.

(C) Preapplication conference/technical assistance.

(i) If needed, a meeting will be scheduled at the request of the applicant between the applicant and an agency representative.

(ii) The meeting is to assist the applicant and to provide guidance in the preparation of the application.

(D) Submission of the application and appropriate review.

(i) The applicant is responsible for the timely submission to the agency of an original and one (1) copy of a completed application and the review fee.

(ii) The application must be signed in blue ink.

(iii) The review fee is three thousand dollars (\$3,000) for all reviews.

(iv) In the event that an application decision results in a hearing before the Health Services Permit Commission, the requesting party will be charged the prevailing agency cost per page to cover the cost for the additional copies required for the hearing.

(E) Determination of completeness.

(i)(a) The agency will determine the completeness of the application within thirty (30) calendar days of the scheduled submission date and, if appropriate, notify the applicant of any additional information required for the review of the proposal.

(b) The agency may allow up to an additional fifteen (15) days to obtain additional information.

(ii) Any proposed application that does not address substantially any one (1) of the criteria will have the proposal returned and will not be considered for review for that cycle.

(F) Information and requirements.

(i) Applicants subject to a review must submit to the agency any information necessary for the review.

(ii) The information requirements may vary according to the type of review and/or projects being reviewed.

(iii) Please note that the agency determination of completeness merely indicates that the questions on the form have been answered.

(iv) This does not indicate that the application is approvable or that the responses to the questions are adequate or appropriate.

(v) The only additional information, which may be submitted after the filing date, is information specifically requested in writing by the agency.

(vi) This request will be limited to information necessary to complete the proposed application.

(vii) An applicant may correct a mistake in an application within the first thirty (30) days after the application is under review if:

(a) No other application in the review cycle is considered as competitive; and

(b) The change does not affect the scope of the proposal, i.e., the change does not result in an increase in:

(1) Service area;

(2) Services to be offered; or

(3) The number of beds requested.

(G) Notification of the beginning of review.

(i)(a) Timely written notification will be sent to:

(1) Affected persons at the beginning of a review; and

(2) Any person who has requested being on the agency's mailing list.

(b) Notification will include the proposed schedule for the review.

(ii) The date of notification is the date on which the notice is sent or the date on which the notice appears in a newspaper of general circulation, whichever is later.

(iii)(a) Written notification to members of the public and third-party payers will be provided through a newspaper of general circulation.

(b) Notification to all other affected persons will be by mail (which may be a copy of the notice or a newspaper).

(H) Review period.

(i) Arkansas Code § 20-8-104 provides that the agency must approve or deny the application within ninety (90) days from the date the application is deemed complete and submitted for review.

(ii) An application is submitted for review when the agency has received a completed application and has so notified the applicant and the public.

(I) Availability of reports — Methods for obtaining public access.

(i) All applications under review and all other written materials essential to the review shall be accessible to the general public.

(ii) The agency will provide, upon request, notification of the status of reviews, findings, and other appropriate information.

(iii) Depending on the amount of material requested there might be a charge for copying.

(J) Opponents written comments.

(i) Opponents to applications have thirty (30) days from the public notice of the start of the review cycle to submit written comments to the agency.

(ii) These comments will be considered in, and will be attached to, the agency's decision.

(iii) An affected person or any other interested party must submit written notice of opposition to the agency in order to:

(a) Receive notice of the agency decision; and
(b) Preserve the right to appeal the agency decision to the commission.

(iv) Applicants will:

(a) Be notified of these comments; and
(b) Have until the fiftieth day of the review cycle to respond in writing to opponent's comments.

(K) **Informal hearing during review.** The Director of the Health Services Permit Agency may convene an informal hearing on any application under review.

(L) **Agency decision.**

(i) According to Arkansas Code § 20-8-104, the agency must approve or deny the application within ninety (90) days from the date the application is deemed complete and submitted for review.

(ii) The criteria that the proposed project met or failed to meet shall be set forth in written findings to the applicant.

(iii) Findings will be sent via certified mail to opponents who have written a letter of opposition and also to unsuccessful applicants.

(M) **Appeal for hearing before the commission.**

(i)(a) Opponents of applications must submit a letter of opposition during the thirty-day review period in order to be eligible to request a hearing before the commission.

(b) Any applicant or opponent seeking an appeal of the agency's decision on a permit of approval shall file for a hearing within thirty (30) days of receipt of the agency's decision.

(c) An appeal shall be written and documented on the agency's appeal form for permit of approval decisions.

(d) The grounds for the appeal must be indicated on the form and no additional grounds may be raised before the commission.

(e) The form will be provided by the agency.

(ii) When there is an application pending before the agency or the commission no additional applications will be placed under review for the same service or facility in the same service area until:

(a) An appeal has been filed in circuit court; or

(b) The time has expired for appeal to circuit court on the pending application.

(iii) Appeals to the commission will be conducted in accordance with the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

(iv)(a) Appellant or appellants will present their case first.

(b) The appellee or appellees will follow.

(c) The appellant or appellants shall be given an opportunity to present rebuttal witnesses.

(d)(1) Each side may cross-examine witnesses.

(2) The time for cross-examination will not be counted as part of the suggested time frame.

(e) The following is the suggested time frame for appeals:

(1) Ten (10) minutes for opening remarks for each side;

(2) Forty (40) minutes for presentation for each side; and

(3)(A) Ten (10) minutes for closing comments for each side.

(B) The appellant or appellants may reserve a portion of the time for rebuttal.

(f)(1) Each commissioner will have a copy of the complete file.

(2) This is a part of the record.

(3) Therefore, it is not necessary to introduce the application, findings, notices, etc., as exhibits in the administrative hearing.

(v)(a) The commission:

(1) Will conduct a hearing within ninety (90) days of the agency decision; and

(2) Shall render its final decision within fifteen (15) days of the close of the hearing.

(b) Failure of the commission to take final action within these time periods shall:

(1) Be considered a ratification of the agency decision on the permit of approval; and

(2) Constitute the final decision of the commission.

(vi)(a) A hearing may be delayed through a continuance by either the applicant or the opponent or opponents if the request is made in writing to the agency at least (10) days before the date of the hearing.

(b) Neither the applicant nor the opponent or opponents may request more than one (1) continuance, i.e., there will be no more than one (1) continuance per side.

(c) This language should not be read to deny any rights guaranteed by the Arkansas Code.

(N) **Ex parte contacts.**

(i) After an application for permit of approval is filed with the agency there shall be no ex parte contacts between:

(a) An applicant or any person acting on behalf of the applicant (or holder of a permit of approval in a decision to withdraw a permit) or any person opposed to the issuance (or in favor of withdrawal) of a permit of approval; and

(b) Any member of the commission.

(ii) An ex parte contact by an applicant or a person representing an applicant may be grounds for the withdrawal of the application from review.

(iii) **Note.** An ex parte communication is defined as oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

20 CAR § 255-106. Continuing effect of a permit of approval.

(a) Implementing a permit of approval.

(1)(A)(i) Applicants approved to construct a new facility or expand an existing facility have nine (9) months from the date of the issuance of the permit (or from the date of the final judicial decision on the permit of approval application) to sign a construction contract.

(ii) The construction contract shall specify that the:

(a) Foundation for the facility will be completed within six (6) months of the signing of the contract; and

(b) Facility will be completed within eighteen (18) months from the date of the signing.

(iii) A license must be obtained within fifteen (15) months from the due date of foundation.

(B)(i) In the event that the construction contract is not signed within nine (9) months, the foundation is not completed within six (6) months of signing the construction contract, or the project is not completed and a license is not obtained within fifteen (15) months of the due date of the foundation, the permit must be terminated by the Health Services Permit Agency.

(ii) Appeals of the termination will be made to the Health Services Permit Commission within thirty (30) days of notice of termination.

(iii) Notice of the termination of a permit will be through certified letter to the holder of the permit.

(iv) Notice of hearings on appeal of the termination will be by mail to the holder of the permit and affected parties and legal notice in a newspaper of statewide coverage.

(2)(A) Applicants that have made a preliminary application for a United States Department of Housing and Urban Development-insured loan on or before the ninetieth day following the issuance of their POA and have not received an approval from the United States Department of Housing and Urban Development by the start of the eighteenth month following the issuance of the POA may request an extension of the POA for up to an additional six (6) months.

(B) In order to receive the extension, the applicant must provide the agency with a letter from the United States Department of Housing and Urban Development documenting:

(i) The date of preliminary application; and
(ii) That the delay in approval was not due to inaction or delays by the applicant.

(C) This request for an extension on the permit of approval must be made at least three (3) weeks prior to the end of the eighteenth month.

(3) Projects not requiring construction or renovation must be licensed within one (1) year of the date of the permit of approval (or within one (1) year of the date of the final judicial decision on the permit of approval application).

(4)(A) After project approval, if the applicant wishes to change the approved project, the proposed changes are subject to permit of approval if they are such that in themselves they would be subject to review.

(B) If an applicant proposes a change that was a significant reason for the approval of the project, then that proposed change must go before the commission to determine whether the change shall require review.

(5) A permit of approval once issued to an approved applicant is not transferable to any other institution or party without approval of the commission.

(6) Extensions.

(A) The commission may approve a request for extension of time if good cause is presented.

(B) Any request for an extension must be made in writing to the agency prior to the expiration of the date on which the phase or project was to be completed.

(C) Under no circumstances will an extension be granted for more than six (6) months at a time.

(D) An applicant may request subsequent extensions.

(7)(A) The above stated timelines also apply to projects that were exempted from permit of approval review.

(B) The starting date for exempted projects will be the date of the exemption, e.g., exempted construction projects will have nine (9) months from the date of exemption to sign a construction contract.

(b) Reporting.

(1) It will be the sole responsibility of the applicant to keep the agency informed of its progress during the approval period.

(2) Documentary evidence of the signed construction contract, the construction of the foundation, and the application for licensure must be submitted to the agency.

(3) A progress report to the agency on the project is required:

(A) At the time the construction contract is due;

(B) At the time the foundation is due to be completed; and

(C) Every six (6) months after that until the project is licensed.

(4) Failure to submit these progress reports may result in the approved party having to appear before the commission to show cause why the permit should not be terminated.

(c) Termination or surrender of a permit of approval or license. Any increase or decrease in beds or services due to the expiration, termination, revocation, or surrendering of a permit or the expiration, termination, revocation, or surrendering of a license must be recorded with the agency at least sixty (60) days prior to the deadline for filing applications for a review cycle in order to be considered in the review cycle.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

Codification Notes. "POA" means permit of approval.

20 CAR § 255-107. Exceptions to use of procedures.

(a) The Health Services Permit Commission may approve an exception to any of the required review procedures by a favorable three-fourths (3/4) vote of the full commission.

(b) In approving a general exception the commission will establish substitute procedures where appropriate.

(c)(1) Upon receiving a written request for an exception, the Health Services Permit Agency will follow the notice and comment procedures and will submit copies of all comments received by the commission with its request.

(2) Before approving the request, the commission will:

(A) Review copies of the comments submitted by the agency; and

(B) Determine that the procedures to be used:

(i) Are consistent with the purposes of the act; and

(ii) Will not adversely and substantially affect the rights of affected persons.

(d) The agency will distribute a notice of the approved exception and of any substitute procedures established under this section.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

20 CAR § 255-108. Enforcement.

(a) The Health Services Permit Commission may authorize the Health Services Permit Agency to enjoin the construction or expansion of existing facilities or operation of any project commenced in violation of Acts 1987, No. 593 as amended through action filed in the chancery court of the judicial district in which the project is located.

(b) In addition, the commission will instruct the agency to contact the appropriate licensure agency and request that the licensing agency make the facility cease operation.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

20 CAR § 255-109. Electronic mail and facsimiles.

(a) Fax copies will be accepted provided that a hard copy with an original signature is received at the Health Services Permit Agency within five (5) days of the fax copy.

(b) The agency will not accept official correspondence via electronic mail for the purposes of:

- (1) Applications;
- (2) Letters of opposition; and
- (3) Appeals.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

20 CAR § 255-110. Utilization reports and fines.

(a) Acts 2005, No. 1271 as amended authorizes the Health Services Permit Agency to collect utilization statistics annually from health facilities requiring a permit of approval.

(b) The agency is also authorized to impose fines on health facilities requiring a permit of approval for the failure to timely submit reports of statistics as required by the agency.

(c) The fines are:

- (1) Up to one hundred dollars (\$100) for a report over thirty (30) days late;
- (2) Two hundred fifty dollars (\$250) for a report over sixty (60) days late;
- (3) Five hundred dollars (\$500) for a report over ninety (90) days late.

Authority. Arkansas Code §§ 20-8-103, 20-8-104, 20-8-110.

Subpart 2. Assisted Living Methodology

Codification Notes. This subpart as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"HSC Rule 500M. Assisted Living Methodology (03/07)"

20 CAR § 255-201. Definitions.

As used in this subpart:

(1) "Abandonment" means the act of an owner/operator to discontinue the operation of a long-term care facility without the sale of that facility to a responsible purchaser, or without ensuring the placement of all facility residents in appropriate long-term care facilities prior to discontinuing operations of the facility; and

(2)(A) "Assisted living facility" means any building or buildings, section or distinct part of a building, whether operated for profit or not, which undertakes through its ownership or management to provide assisted living services for a period exceeding twenty-four (24) hours to more than three (3) adult residents of the facility who are not relatives of the owner or administrator.

(B) Assisted living facility includes those facilities, which provide assisted living services either directly or through contractual arrangements or which facilitate contracting in the name of residents; and

(3) "Service area" means the county in which the beds or facility is located or is to be located.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

20 CAR § 255-202. Need.

(a) **Population-based need.**

(1) This methodology projects the need for assisted living beds at thirty (30) beds per one thousand (1000) persons who are sixty-five (65) years of age and older.

(2) Need will consider the number of proposed and existing ALF beds and the number of proposed and existing RCF beds in a county.

(3) Need will be projected five (5) years forward using the most recent census data available from the University of Arkansas at Little Rock Institute for Economic Advancement.

(b)(1) An exception to the population-based formula exists when occupied beds in all facilities in a county are seventy-five percent (75%) occupied by residents who are documented to be under the age of sixty-five (65) years of age.

(2) In this instance, beds in those facilities will not be counted in the county bed need.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

Codification Notes. "ALF" means assisted living facility.

20 CAR § 255-204. Size.

Maximum size. A maximum of seventy-five (75) beds will be awarded to any one (1) applicant per service area, per cycle under the population based methodology.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

20 CAR § 255-205. Unfavorable review.

(a) Existing long-term care facilities will have an unfavorable review if the following quality of care standards are not met:

(1) No nursing home will be awarded a permit of approval for assisted living if the existing facility has had:

(A) Two (2) Class A violations as found in Arkansas Code § 20-10-205 according to the Office of Long-Term Care in any inspection within the last twelve (12) months preceding the date the application is filed with the Health Services Permit Agency;

(B) Two (2) Class B violations as found in Arkansas Code § 20-10-205 according to the office in any inspection within the last twelve (12) months preceding the date the application is filed with the agency;

(C) A Class A and a Class B violation as found in Arkansas Code § 20-10-205 according to the office in any inspection within the last twelve (12) months preceding the date the application is filed with the agency;

(D) An H level or higher deficiency, according to the office in any inspection within the last twelve (12) months preceding the date the application is filed with the agency; or

(E) The facility's Medicaid or Medicare provider agreements terminated within twelve (12) months preceding the date the application is filed with the agency; and

(2) No assisted living or residential care facility will be awarded a permit of approval for assisted living if the existing facility has had:

(A) Two (2) Class A violations as found in Arkansas Code § 20-10-205 according to the office in any inspection within the last twelve (12) months preceding the date the application is filed with the agency;

(B) Two (2) Class B violations as found in Arkansas Code § 20-10-205 according to the office in any inspection within the last twelve (12) months preceding the date the application is filed with the agency; or

(C) A Class A and a Class B violation as found in Arkansas Code § 20-10-205 according to the office in any inspection within the last twelve (12) months preceding the date the application is filed with the agency.

(b) An application will be denied if the owner/operator applying for a permit approval has abandoned one (1) or more long-term care facilities in Arkansas or in another state.

(c) The agency may consider an out-of-state applicant's compliance or enforcement history in determining whether to grant a permit of approval.

(d)(1) No application for beds will be approved that will cause a facility to exceed one hundred (100) beds.

(2) Any deviation will require special consideration by the Health Services Permit Commission.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

20 CAR § 255-206. Review criteria.

(a) The Health Services Permit Agency and the Health Services Permit Commission will utilize the following criteria in the review process.

(b)(1) Whether the proposed project is needed or projected as necessary to meet the needs of the population.

(2) Criteria includes review of a detailed business plan that includes a narrative description with supporting data and analysis that illustrates the need for an assisted living facility in the proposed service area.

(3) Data and analysis must also include the following:

(A)(i) Population characteristics of the market or service area by:

(a) Age;

(b) Gender;

(c) Income;

(d) Morbidity;

(e) Functional impairments.

(ii) There must also be a narrative description of the relationship between this demographic data and the population expected to enter the proposed assisted living facility;

(B) Market and payor mix for intended facility;

(C) Proximity to other facilities including nursing homes, hospitals, or clinics;

(D) Current local conditions that favor the occupancy or sustainability of the proposed facility;

(i) Local support for the project;

(ii) Transportation access to the facility;

(iii) Resident access to other local health, recreational, or other services;

(E) Special needs of this community; and

(F) Special features of this facility.

(c)(1) Whether the project can be adequately staffed and operated when completed.

(2) Criteria include projected sources of staffing.

(d) Whether the proposed project is economically feasible.

(e) Whether the project will foster cost containment.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

Subpart 3. Home Health Criteria

Codification Notes. This subpart as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"HSC Rule 300M. Home Health Criteria (12/06)"

20 CAR § 255-301. Methodology.

(a) Standards.

(1) The following is the standard to be used in the review of additional or expanded home health agencies.

(2)(A) The methodology is based on the following assumptions:

(i) More populated areas tend to have a higher population density;

and

(ii) Areas with higher population density can be served with fewer staff due to reduced travel time.

(B) Thus, it will take fewer staff to serve the same number of patients in a metropolitan area than it would to serve patients in a rural area.

(3) An area* with up to thirty thousand (30,000) population may be approved for a maximum of two (2) agencies.

(4) A county with thirty thousand (30,000) to fifty thousand (50,000) population may be approved for a maximum of three (3) agencies.

(5) A county with fifty thousand (50,000) to seventy-five thousand (75,000) population may be approved for a maximum of four (4) agencies.

(6) A county with seventy-five thousand (75,000) to one hundred and ten thousand (110,000) population may be approved for a maximum of five (5) agencies.

(7) A county with one hundred and ten thousand (110,000) to one hundred and fifty thousand (150,000) population may be approved for a maximum of six (6) agencies.

(8) A county with one hundred and fifty thousand (150,000) to two hundred and fifty thousand (250,000) population may be approved for a maximum of seven (7) agencies.

(9) A county with two hundred and fifty thousand (250,000) to four hundred thousand (400,000) population may be approved for a maximum of eight (8) agencies.

(10) A county with four hundred thousand (400,000) and over population would be approved for a maximum of one (1) Health Services Permit Agency per every fifty thousand (50,000) population.

(b) **Exception.** Approvals may be granted when the methodology does not show a need if the applicant offers documentation to prove that existing agencies are not meeting the needs of the service area population.

(c) **Application for a change in licensure category.**

(1) An agency with a "B" license that applies for a permit of approval to proceed with obtaining an "A" license will have to meet published criteria including the standard of need.

(2) Such approval may not exceed the standard of need unless the applicant has provided evidence to support an exception as noted in subsection (b) of this section.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

20 CAR § 255-302. Unfavorable review.

No application will be approved for a new home health agency or an expanded service area or change in license category if the applicant has had any condition level deficiencies in the previous thirty-six (36) months as determined by the applicable state survey agency.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

20 CAR § 255-303. Rural hospitals.

(a)(1) Small rural hospitals that do not have a home health agency may be approved for a home health agency to serve either the:

- (A) County in which the hospital is located; or
- (B) Townships within a twenty-mile radius of the hospital.

(2) "Small hospitals" means short-term acute care hospitals of fifty (50) or fewer licensed beds.

(3) "Rural counties" means counties with a population of twenty-five thousand (25,000) or less in the last decennial census.

(4) Hospitals approved under this subpart must have their home health agency licensed no later than twenty-four (24) months from the date of approval.

(b) If the hospital voluntarily or otherwise loses, surrenders, or transfers its home health license, the hospital is not eligible for five (5) years for a home health POA using the rural hospital designation.

(c) This five-year prohibition would not be applicable if the hospital proves it did not have any financial gain or receive any benefit from the loss, surrender, or transfer of its home health license.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

Codification Notes. "POA" means permit of approval.

Subpart 4. Hospice Methodology

Codification Notes. This subpart as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"HSC Rule 400M. Hospice Methodology (12/07)"

20 CAR § 255-401. Definitions.

As used in this subpart:

(1)(A) "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 interdisciplinary 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.

(B) 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;

(2)(A) "Hospice facility" means a facility that houses hospice beds licensed exclusively to the care of terminally ill patients but not beds licensed to:

- (i) Hospitals;
- (ii) Nursing homes; or
- (iii) Other assisted living or residential facilities.

(B) It can provide any of the four (4) levels of hospice care.

(C) For purposes of this application, terminally ill patients are defined according to the Social Security Act of 1935, 42 U.S.C. § 301 et seq., as those individuals with a terminal diagnosis and a prognosis of six (6) months or less if the diagnosed condition runs its normal course; and

(3) "Hospice program" means a public agency or private organization or subdivision or either of these that is primarily engaged in providing care to terminally ill individuals, 42 C.F.R. pt. 418.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

20 CAR § 255-402. Hospice agencies.

(a) This subpart regulates the establishment of new hospice agencies and the expansion of existing hospice service areas.

(b) **Need.**

(1) The projected number of hospice patients will be thirty percent (30%) of the average of the total deaths that occurred in the county for the four (4) most recent years available as calculated by the National Center for Health Statistics.

(2)(A) Numeric need for a new hospice is demonstrated if the projected number of patients eligible for hospice per calendar year is thirty-five (35) or greater in the proposed service area (or expanded area).

(B) The projections for the proposed area would have to indicate a need for thirty-five (35) or more after the deaths for the existing hospices for the previous four (4) quarters have been subtracted out from the total projected hospice patients.

(C) The service area is the county.

(c) **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) 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.

(B) An exception exists if an applicant has a hospice office in a contiguous county.

(C) 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; and

(4) Agreement to provide timely and accurate reporting data to the Health Services Permit Agency as requested.

(d)(1) Regardless of numeric need, no new hospice agency will be approved unless hospice death data from the last eight (8) quarters for each hospice agency servicing the proposed service area has been available for publishing by the Health Permit Services Agency.

(2) 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 (2) years.

(e) **Unfavorable review.**

(1) The Health Services Permit 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 thirty-six (36) months as determined by the applicable state survey agency unless the state survey agency has documented that the deficiency was corrected at least twelve (12) months prior to the application submission.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

20 CAR § 255-403. Hospice facilities.

(a) This subpart regulates the establishment of new hospice facilities and expansion of existing hospice facilities.

(b)(1) The objective of this methodology is to ensure that an adequate supply of hospice beds are available and accessible while avoiding the proliferation of unneeded hospice facilities in the service area.

(2) The service area is the county.

(c)(1) Application requirements are based on federal guidelines including Section 1861 of the Social Security Act of 1935 that states that a hospice:

(A) Must provide all levels of hospice care; and

(B) Cannot choose to only operate an inpatient facility.

(2) It must offer all levels of care including general inpatient, routine, respite, and continuous care.

(3) The only eligible applicants for a hospice facility are those agencies that have operated a licensed hospice agency for at least one (1) year prior to seeking application for a hospice facility.

(d) **Bed need.**

(1) The calculations to determine the number of patients eligible for hospice services are the same as those found in 20 CAR § 255-402(b)(1).

(2) The formula to determine the need for hospice beds is based on the federal allowance of twenty percent (20%) inpatient days and the Arkansas average of five and six-tenths percent (5.6%) in-patient days (five and two-tenths percent (5.2%) general inpatient and five-tenths percent (0.5%) respite).

(3) The Arkansas average is rounded to six percent (6%).

(4) The mean of six percent (6%) and twenty percent (20%) is thirteen percent (13%).

(5) This mean, thirteen percent (13%), is multiplied times the number of projected hospice patients in the county to determine the county need for hospice beds.

(6) Applicants can apply for a minimum of four (4) beds and a maximum of thirty-six (36) beds.

(7) Applicants who have a facility and who propose to expand:

(A) Cannot expand to greater than the maximum number of beds per county (see Bed Need Book Appendix A); and

(B) Cannot exceed thirty-six (36) beds.

(8) Hospice need is projected five (5) years in the future as of July 1 of each calendar year.

(9) The number of projected hospice patient deaths will be computed from the most recent:

(A) Crude death available from the Center for Health Statistics, Department of Health; and

(B) Available population estimates obtainable from the United States Census Bureau.

(e) **Requirements.** Applicants are required to provide a business plan including the following:

(1) Documentation of financial support to provide cost efficient hospice care as measured by industry standards the National Hospice and Palliative Care Organization or the Hospice Association of America;

(2) A street address and city for the proposed facility in the county in which the applicant is applying for a permit; and

(3) Agreement to provide timely and accurate reporting data to the Health Services Permit Agency as requested.

(f) **Hospice facility emergency rule.**

(1) Hospice facilities can expand current licensed bed capacity to meet the needs of hospice patients who are displaced as a result of a declared emergency in Arkansas or in a border state.

(2) In this circumstance, hospice facilities may temporarily expand without a permit of approval if the following conditions are met:

(A) Life safety will not be jeopardized for any individual;

(B) The immediate needs of residents and other individuals sheltered at the facility can be met by the facility;

(C)(i) The facility maintains a log of the additional persons being housed in the facility.

(ii) The log shall include the individual's name, usual address, and the dates of arrival and departure;

(D) The admissions and discharge log shall be deidentified and a monthly report provided to the Health Service Permit Agency;

(E) The hospice facility complies with all reporting requirements of state and federal rules and regulations; and

(F) Any hospice facility that temporarily expands its capacity pursuant to this subpart must revert to its permit of approval capacity at the end of the one hundred twenty-day period.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

Subpart 5. Nursing Facility Bed Methodology

20 CAR § 255-501. Definitions.

As used in this subpart:

(1)(A) "Beds in transition" means beds that:

(i) Originate from a licensed facility and are being transferred or moved to a new, existing, or replacement facility in a different county; and

(ii) Are awaiting final licensing of new construction.

(B) 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; and

(2) "Licensed beds" means the bed count as reflected on the current license issued by the Department of Human Services, Office of Long-Term Care.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

20 CAR § 255-502. Population-based methodology.

(a)(1) Population-based methodology calculates the projected nursing facility bed need using estimated population data for four (4) age groups (see below) for a service area (county).

(2) Need is projected five (5) years forward using the most recent census data available from the University of Arkansas at Little Rock 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 ninety-three percent (93%) for the most recently available occupancy as reported by the Department of Human Services and as reflected in the current quarterly published Bed Need Book.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

20 CAR § 255-503. Utilization-based methodology.

(a)(1) Regardless of projected need in a county, nursing facilities may acquire up to twenty-five (25) additional beds if the applicant nursing facility:

(A) Averaged ninety percent (90%) or greater occupancy according to the most recent twelve-month census data available from Department of Human Services for at least four (4) months of the last six-month period;

(B) Currently has no approved but unlicensed beds;

(C) Proposes to acquire beds from a facility that averaged seventy percent (70%) or less occupancy for the previous twelve-month period according to the most recent twelve-month occupancy data available from the department as reflected in the most current published Bed Need Book; and

(D) Has not acquired beds pursuant to this subsection in the previous twelve-month period.

(2) 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 are satisfied.

(b) Nursing homes with less than sixty (60) licensed beds could be approved to expand to seventy (70) beds, if the facility:

(1) Averaged ninety percent (90%) or greater occupancy according to the most recently available census as reported by the department for at least four (4) months of the last six-month period;

(2) Is located in a county without a population-based "need";

(3) Proposes to acquire beds from a facility that averaged less than seventy percent (70%) occupancy for the previous twelve-month period according to the most recent twelve-month census data available from the department and as reflected in the current quarterly published Bed Need Book; and

(4) Is not located in a county where the number of approved but unlicensed beds equals ten percent (10%) or more of the county's licensed beds in the previous twelve-month period.

(c)(1) Notwithstanding the foregoing provisions of this section but subject to 20 CAR § 255-506(a)(4) and (a)(5), and subject to Health Services Permit Commission approval, an existing facility may relocate beds within the county where the facility is located.

(2) 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.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

20 CAR § 255-504. Replacement of facilities and beds.

(a)(1) Qualified applicants would be applicants who propose to replace an entire existing licensed facility with “new construction”.

(2) Existing licensed nursing facilities are eligible for replacement without respect to the need methodology.

(3) As used in this methodology, “new construction” means the replacement of an entire facility with a newly constructed facility.

(4) This 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.

(b)(1) Regardless of county “need” and occupancy, applicants may be approved for up to a twenty percent (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.

(2) The applicant must acquire the additional beds from a facility that averaged less than seventy percent (70%) occupancy for the previous twelve-month period according to the most recent twelve-month occupancy data available from Department of Human Services as reflected in the current quarterly published Bed Need Book.

(3) 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 twenty percent (20%) increase of existing licensed beds in the applicant facility.

(c)(1) Qualified applicants cannot combine any criteria to increase existing licensure by more than twenty percent (20%) except in the case of facilities expanding up to seventy (70) beds.

(2) This does not affect applicants which qualify for approval under 20 CAR § 255-101(a)(1).

(d) Qualified applicants may move to another county or counties if the:

(1) Applicant's current beds are located where existing (i.e., licensed and approved) beds exceed the projected county need by one hundred (100) or more beds;

(2) Number of beds being moved does not exceed the projected net need of the county (or counties) to which the beds are being moved;

(3) Moved beds are used for new construction; and

(4) Occupancy for the county to which the facility or beds are being moved has had an average overall occupancy of ninety-three percent (93%) or more for the most recently available occupancy as reported by the quarterly published Bed Need Book.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

20 CAR § 255-505. Application approval priorities.

(a) In any one (1) review cycle, for all applications submitted under 20 CAR § 255-503, only two (2) applications may be approved for each county.

(b) In any one (1) review cycle, for all the applications submitted under 20 CAR § 255-504, 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)(A) Beds available shall first be allocated to applicants who propose to add beds to an existing licensed facility whose facility had a ninety-six percent (96%) average occupancy rate or greater for the most recently available occupancy as reported by the Department of Human Services and as reflected in the current quarterly published Bed Need Book, provided all requirements for approval of the application or applications are met.

(B) Maximum beds awarded pursuant to this first priority shall be either a number of beds equivalent of up to a ten percent (10%) increase in the facility's existing number of licensed beds or ten (10) beds, whichever is greater;

(2)(A) Beds available shall next be allocated to applicants who propose to add beds to an existing licensed facility under Utilization based methodology, 25 CAR § 255-503, provided all requirements for approval of the application or applications are met.

(B) Beds awarded pursuant to this second priority shall be either a number of beds equivalent of up to a ten percent (10%) increase in the facility's existing number of licensed beds or ten (10) beds, whichever is greater.

(C) This subdivision is not intended to require a county to have a projected net need to qualify for a 25 CAR § 255-503 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)(A) Remaining beds available shall next be allocated to applicants who propose to replace facilities pursuant to 25 CAR § 255-504, the replacement methodology, who are eligible for a twenty percent (20%) increase in their licensed capacity.

(B) The subdivision is not intended to require a county to have a projected net need to qualify for a 25 CAR § 255-504 twenty percent (20%) increase but rather is intended to ensure that if there is a twenty percent (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;

(4)(A) Remaining available beds shall next be allocated to applicants who have an existing facility with less than seventy (70) beds who are proposing to expand to seventy (70) beds.

(B) These applicants may be approved for a number of additional beds necessary to enable them to expand to seventy (70) beds.

(C) However, if these applicants have less than seventy (70) beds and more than sixty (60) licensed beds they may be approved for up to a ten-bed increase; and

(5) Remaining beds available shall next be allocated to applicants proposing to construct a new facility which the Health Services Permit Agency finds meet all criteria for approval.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

20 CAR § 255-506. Unfavorable review.

(a) An application for a permit of approval under 20 CAR § 255-501 et seq., Nursing Facility Bed Methodology will be denied if it:

(1)(A) Does not agree to eliminate all three (3) or more bed units in the applicant facility.

(B) A facility may have three (3) or more beds units only in order to comply with specific rules for intensive care, Alzheimer's disease, and/or subacute care units (pertinent rules 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;

(3)(A) Is for any nursing home found to have had an H level deficiency or higher by the office 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 Health Services Permit Commission.

(B) This section is intended to prohibit the expansion of existing facilities with a history of serious noncompliance.

(C) This section, however, shall not apply to applicants under 20 CAR § 255-504 who are replacing older facilities, or who are correcting the noted deficiency;

(4) Will cause a facility to exceed one hundred forty (140) beds;

(5) Will create a facility with fewer than seventy (70) beds;

(6)(A) Would create an under-served area.

(B) The commission will make this determination; or

(7)(A) Is located in a county where the number of approved but unlicensed beds, including beds in transition, equals ten percent (10%) or more of the county's licensed beds in the previous state fiscal year, e.g., if in 1997 County "A" had one hundred forty (140) licensed beds with a twenty-eight-bed approval then the facilities in County "A" would not be eligible for additional beds under either the population-based or utilization-based methodology.

(B) 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 (1) or more long-term facilities either in Arkansas or in another state.

(c)(1) The Health Services Permit Agency may consider an applicant's compliance and enforcement history in determining whether to grant a permit of approval.

(2) 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 agency.

(3) Occupancy data on facilities that did not report to the office will be based on the survey conducted by the agency.

(4) Non-reporting facilities include facilities without Medicaid beds and those facilities which changed ownership during the previous calendar year.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

Codification Notes. "POA" means permit of approval.

20 CAR § 255-507. Life care nursing facility.

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

(1) Continuing care providers, as established by the General Assembly and codified in the Continuing Care Provider Regulation Act, Arkansas Code §§ 23-93-101 – 23-93-114 and regulated by the Commissioner of the State Insurance Department, shall be governed by the statutory and regulatory provisions relating to applications for long-term care facilities; and

(2) Continuing care "life care providers", as established by the Arkansas General Assembly and codified in Arkansas Code § 23-93-201 et seq., regulated by the Commissioner of the State Insurance Department 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:

(A) After issuance of a license by the State Insurance Department as a life care provider, the life care provider may apply for a permit of approval for a nursing facility based on one (1) bed per ten (10) 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;

(B)(i)(a) 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 State Insurance Department and the Office of Long-Term Care, based on one (1) bed per additional ten (10) 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 subdivision, and based on the occupancy of the nursing facility during the previous twelve (12) months, requiring the previous twelve (12) 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.

(b) The life care provider shall furnish the agency all information requested to substantiate the application.

(ii)(a) 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 (12) months, requiring seventy percent (70%) occupancy over the previous twelve (12) months, and shall entitle the life care provider, provided it is in compliance with and has a current license from the State Insurance Department and the office, to an additional ten (10) 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.

(b) The life care provider shall furnish the agency all information requested to substantiate the application.

(iii) Only one (1) of these methods may be used in a calendar year;

(C)(i) Should the life care provider's license be revoked by the State Insurance Department, this commission shall recommend to the office that the nursing facility lose its license to own and operate a nursing facility.

(ii) 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; and

(D)(i) The nursing facility or beds of a life care provider shall not be sold or transferred to any other entity.

(ii) 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.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

Codification Notes. The title of this section as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"Lifecare Nursing Facility (10/02)"

Subpart 6. Psychiatric Residential Treatment Facilities (PRTF) Bed Need Methodology

Codification Notes. This subpart as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"HSC Rule 110M. Psychiatric Residential Treatment Facilities (PRTF) Bed Need Methodology (03/07)"

20 CAR § 255-601. Definition.

As used in this part, "psychiatric residential treatment facility" means a residential childcare facility in a nonhospital setting that provides a structured, systematic, therapeutic program of treatment under the supervision of a physician licensed by the State Medical Board who has experience in the practice of psychiatry, for children who are emotionally disturbed and in need of daily nursing services, physician's supervision, and residential care, but who are not in an acute phase of illness requiring the services of an inpatient psychiatric hospital. Acts 2005, No. 2234.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

20 CAR § 255-602. Population-based methodology.

(a) **Projection time frame.** Each July 1 bed need will be projected five (5) years from the current year, i.e., July 1, 2006 projections will be made for the year 2011.

(b) Service area is by PRTF area.

Area 1	Area 2	Area 3	Area 4	Area 5	Area 6
Counties	Counties	Counties	Counties	Counties	Counties
Benton	Clay	Saline	Clark	Arkansas	Mississippi
Carroll	Craighead	Pulaski	Garland	Cleveland	Poinsett
Madison	Greene	Lonoke	Hot Spring	Grant	Cross
Washington	Lawrence	Prairie	Montgomery	Jefferson	Crittenden
Crawford	Baxter	Pope	Pike	Lincoln	St. Francis
Franklin	Woodruff	Yell	Calhoun	Ashley	Lee
Logan	Randolph	Johnson	Columbia	Bradley	Phillips
Polk	Cleburne	Faulkner	Dallas	Chicot	Monroe
Scott	Fulton	Conway	Nevada	Desha	
Sebastian	Independence	Perry	Ouachita	Drew	
Searcy	Izard		Union		
Boone	Jackson		Hempstead		
Marion	Sharp		Howard		
Newton	Stone		Miller		
	Van Buren		Lafayette		
	White		Little River		
			Sevier		

(c) **Bed need formula.**

(1)(A) One and one-thousandth (1.001) beds per one thousand (1,000) persons six through seventeen (6 – 17) years of age.

(B) Seventy-eight-hundredths (.78) beds per one thousand (1,000) persons eighteen through twenty-one (18 – 21) years of age.

(2) Before additional beds may be approved existing PRTFs must have averaged eighty percent (80%) occupancy for the previous calendar year.

(d) **Review priorities.** Applicants will be approved in the following ranked order:

- (1) Existing PRTFs that are transferring beds;
- (2) Existing PRTFs wishing to expand and replace an older facility;
- (3) Applicants for new PRTFs in sections of the state that are more than one and a half (1 1/2) hours travel time from existing PRTFs; and
- (4) Applicants for new PRTFs.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

Codification Notes. "PRTF" means psychiatric residential treatment facility.

20 CAR § 255-603. Transfer of beds.

An existing PRTF may apply to transfer beds if:

(1) The applicant is fully licensed, is in good standing, and has no pending adverse action before its licensing board;

(2) The applicant is transferring to an existing facility in which capacity is available and is fully licensed, is in good standing, and has no pending adverse action before its licensing board;

(3) The number of transferred beds does not exceed the net need of beds for that area or the applicant submits rationale for the transfer that demonstrates that the transfer will:

(A) Improve the quality and access to care for the region to which the beds are being transferred;

(B) Meet the unmet need in the region; and

(C) Not significantly impact the quality of care or access in the region from which the beds are being transferred;

(4) The applicant submits an operation and finance plan that is economically feasible; and

(5) The applicant documents ability to adequately staff the facility.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

Codification Notes. "PRTF" means psychiatric residential treatment facility.

20 CAR § 255-604. Unfavorable review.

The Health Services Permit Agency may consider an applicant's compliance and enforcement history, both in Arkansas and out of state, in determining whether to grant a permit of approval.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

20 CAR § 255-605. Moratorium.

(a) Beginning February 1, 2008, there will be a moratorium on the construction or addition of any additional PRTF beds beyond the current number of permitted and licensed beds for the state.

(b) Applications for additional beds will not be accepted during the moratorium.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

Codification Notes. "PRTF" means psychiatric residential treatment facility.

Subpart 7. Residential Care Facility (RCF) Methodology

Codification Notes. This subpart as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"HSC Rule 200M Residential Care Facility (RCF) Methodology (10/05)"

20 CAR § 255-701. Residential care.

Definition. As used in this part:

(1) All references to "residential care" and "residential care facilities" refer to facilities that meet the definition contained in Acts 1993, No. 1238, which states:

"(14) 'Residential care facility' means a building or structure which is used or maintained to provide, for pay on a

twenty-four hour basis, a place of residence and board for three (3) or more individuals whose functional capabilities may have been impaired but do not require hospital or nursing home care on a daily basis but could require other assistance in activities of daily living."

(2) Residential care facilities also include any other facility, which meets the statutory definition regardless of licensure category or the existence of a licensure category.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

20 CAR § 255-702. Service area.

Service area will be the county.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

20 CAR § 255-703. Bed need.

(a) Bed need will be determined by a population-based methodology and a utilization-based methodology.

(b) **Population-based.**

(1) **Numerical formula.**

(A)(i) At ninety percent (90%) optimum occupancy the following number of RCF beds are projected by age group:

Age Group	Beds per 1000
Under 65	.5545
65-74	2.3014
75-84	5.1090
85+	17.4996

(ii) Bed need will be projected five (5) years forward each July 1, e.g., in 2003 bed need will be projected for the year 2008.

(B)(i) An exception to the population-based formula exists when occupied beds in all facilities in a county are seventy-five percent (75%) occupied by residents who are documented to be under the age of sixty-five (65) years of age.

(ii) In this instance, beds in those facilities will not be counted in the county bed need.

(2) **Review priorities.** Applicants will be approved in the following ranked order:

(A)(i) Applicants with high occupancy will have a priority for an increase of ten percent (10%) or ten (10) beds whichever is greater.

(ii) For definition of "high" see subsection (c)(2)(B) of this section, Utilization based, below;

(B) Applicants replacing older facilities will have a priority for a twenty percent (20%) increase;

(C)(i) Applicants wanting to expand will have a priority for an increase of five percent (5%) or five (5) beds whichever is greater.

(ii) The above priorities may not be combined i.e., an older facility with high occupancy will be eligible for either a ten percent (10%) or a ten-bed increase or a twenty percent (20%) increase but not both.

(iii) No additional beds will be approved for a county showing a need under the population-based methodology where:

(a) There is a valid permit of approval for the first RCF in the county which has yet to be licensed; or

(b)(1) If the county has had its first and only RCF licensed within the last calendar year.

(2) After the initial RCF has been licensed for six (6) months, the Health Services Permit Commission will review the situation and determine if additional beds will be approved for the county.

(3) The commission may exceed need, when a need exists and is less than ten (10) beds in order to approve one (1) applicant for up to a ten-bed facility.

(c) **Utilization based.**

(1) This methodology would apply in those service areas where a population-based need is not projected.

(2)(A) Beds may be approved if a facility has had a high occupancy for the previous calendar year.

(B) High occupancy shall be at least an average of eighty-five percent (85%) for facilities of ten (10) beds or less, ninety percent (90%) for facilities of twenty (20) beds or less, and ninety-five percent (95%) for facilities over twenty (20) beds.

(3)(A) Proof of occupancy will be based upon resident occupancy.

(B) Proof of occupancy is:

(i) Derived from the Department of Human Services, Office of Long-Term Care occupancy reported at the last two (2) site visits; and

(ii) Is averaged with the occupancy reported on the site visit conducted by the Health Services Permit Agency.

(C) Occupancy is defined as including any individual for whom the facility has agreed to provide room or board, or services or assistance, regardless of whether they are physically present at the time the occupancy is counted.

(4) Eligible applicants may be approved for a ten bed increase.

(d) **Unfavorable review.** No residential care facility will be awarded a permit of approval if the existing facility has had more than two (2) Class A or Class B violations pursuant to Arkansas Code § 20-10-205 in any inspection within the last 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.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

Codification Notes. "RCF" means residential care facility.

20 CAR § 255-704. Acts 2001, No. 1230.

The Arkansas Assisted Living Act, Acts 2001, No. 1230, created the assisted living program and allows residential care facilities that were licensed or holding a permit of approval as of the effective date of the Arkansas Assisted Living Act and subsequent purchasers to be licensed as assisted living facilities subject to the provisions of the Arkansas Assisted Living Act and without a permit of approval.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

20 CAR § 255-705. Moratorium.

(a) Beginning July 1, 2005, applications for construction of new residential care facilities will not be accepted, including applications for replacement facilities, additional beds, or to expand existing bed capacity.

(b) However, applications for replacement of facilities of sixteen (16) beds or fewer will be accepted if the number of beds required for replacement is less than or equal to the number of beds for which the residential care facility was licensed before the application for replacement.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

Subpart 8. Intermediate Care Facilities for Individuals with Intellectual Disabilities Moratorium

20 CAR § 255-801. Moratorium on intermediate care facilities for individuals with intellectual disabilities.

As authorized by Acts 1987, No. 593, as amended, the Health Services Permit Commission proposes to retain the moratorium on the acceptance of permit of approval applications on proposals to add intermediate care facilities for individuals with intellectual disabilities or any other long-term care facility beds for which there is not an adopted review standard of need.

Authority. Arkansas Code §§ 20-8-103, 20-8-104.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"March 1994"