



SOUTH DAKOTA
DEPARTMENT OF HEALTH

Study Committee on Sustainable Models for Long Term Care

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History of the Moratorium

(2022 Annual Report on Additional Need for Nursing Facility Beds - Page 6)

Enacted in 1988

Intended to:

- Help control skyrocketing long term health care costs
- Make sure our elderly received the most appropriate level of long term care
- Spur further growth of home-based and community-based services such as home health care, assisted living centers, and residential living centers

Capped the number of nursing facility beds per facility and overall statewide

South Dakota was one of the states with the highest number of nursing home beds per capita in the nation and very few alternative long term care options available

Current Number of Facilities

Facility Type	Number of Facilities
Home Health	27
Assisted Living Facilities	159
Residential Living Centers	25
Community Living Homes	6
Nursing Facilities	97

Moratorium Beds

There have been 20 nursing facilities that have closed since 2005

- Accounts for a total of 1,215 moratorium beds
 - 286 beds have been redistributed to 6 facilities since 2013
 - Last redistribution of 50 beds in February with the opening of Flandreau Santee Sioux Tribe Care Center approved in 2020 through SB 160
 - Anticipate redistribution of 50 beds following opening of approved facility in Lyman County through SB 147 in 2022
 - 983 remain available for redistribution
 - 484 beds currently available through SDCL § 32-12-39.6

Current Status of Beds

DOH Moratorium Beds	7,068
DOH Licensed Beds	5,935
Occupied Beds	4,716
% of Licensed Beds Occupied	79.46%
Moratorium Occupancy %	66.72%

Excess Moratorium Beds	1,133
Unoccupied Licensed Beds	1,219
Excess Beds (Moratorium and Licensed/Unoccupied)	2,352

* DHS Occupancy Report – 6/9/23

Applicable State Statutes (Appendix I)

34-12-35.6. Redistribution of existing nursing facility beds.

Notwithstanding the provisions of §§ [34-12-35.4](#) and [34-12-39.2](#), the Department of Health may authorize the increase in the number of beds in an existing nursing facility or may authorize the construction of a new nursing facility as defined in § [34-12-1.1](#), so long as the total number of nursing facility beds statewide does not exceed the total number of beds in existence statewide on July 1, 2005.

Source: SL 2012, ch 178, § 1.



34-12-35.7. Annual consideration of need for additional nursing facility beds or new nursing facilities .

The Department of Health, with assistance from the Department of Human Services, shall annually consider the need for additional nursing facility beds or additional new nursing facilities or both in the state. The following factors shall be taken into consideration:

- (1) The current number of available nursing facility beds and nursing facilities in the state;
- (2) The current and projected future need for additional nursing facility beds and nursing facilities in the state and the current long-term care needs of the population to be served;
- (3) The number of nursing facility beds available for redistribution and the number of nursing facility beds redistributed pursuant to this chapter;
- (4) The potential impact on existing nursing facilities;
- (5) Any additional costs to the state or general public that may result; and
- (6) Other current and projected long-term healthcare needs across the state.

Source: SL 2012, ch 178, § 2; SL 2017, ch 151, § 1.



**34-12-35.8. Proposals to address identified need for additional nursing facility beds or new nursing facilities--
Promulgation of rules.**

If a need for additional nursing facility beds or additional new nursing facilities or both in a defined area is identified by the Department of Health in accordance with § [34-12-35.7](#), the department shall solicit and evaluate proposals to address the identified need. In doing so the department shall utilize the process and criteria established in §§ [5-18D-17](#) to [5-18D-20](#), inclusive. Additionally, the Department of Health may promulgate rules pursuant to chapter [1-26](#) to establish additional criteria specific to the identified need. The rules may include criteria pertaining to:

- (1) Minimum nursing facility occupancy rates;
- (2) Unique characteristics of the area and population to be served;
- (3) Proposal viability, including financial business plan information and payor source information;
- (4) Local community support for the proposed project;
- (5) Benchmarks for quality assurance;
- (6) Additional services to be provided; and
- (7) Ability to meet workforce needs.

Source: SL 2012, ch 178, § 3.



34-12-35.9. Authorization to increase number of nursing facility beds.

Notwithstanding the provisions of § [34-12-35.4](#), an existing nursing facility as defined in § [34-12-1.1](#) may increase its number of beds with prior authorization by the Department of Health in accordance with §§ [34-12-35.6](#) to [34-12-35.8](#), inclusive. Any existing nursing facility authorized to increase its number of beds in accordance with §§ [34-12-35.6](#) to [34-12-35.8](#), inclusive, shall maintain its current Medicaid occupancy rate for the facility's existing beds, and shall maintain an annual minimum Medicaid occupancy rate no less than ten percent below the statewide average at the time rates are established for the newly authorized beds.

Source: SL 2012, ch 178, § 4.



34-12-35.11. Annual report to legislative committees on need for additional nursing facility beds or nursing facilities.

The Department of Health and the Department of Human Services shall, before the fourth Tuesday in January of each year, submit a written report to and testify before the Senate and House standing committees on health and human services concerning the consideration of additional nursing facility beds or additional new nursing facilities and long-term healthcare needs pursuant to § [34-12-35.7](#).

Source: SL 2017, ch 151, § 2.



34-12-39.2. New nursing facilities--Limitations--Requirements.

No new nursing facility may be constructed, operated, or maintained in this state unless the nursing facility is serving as a replacement for an existing facility and has met at least one of the following requirements to:

- (1) Eliminate or prevent imminent safety hazards as defined by federal, state, or local fire, building, or life safety codes or regulations;
- (2) Comply with state licensure standards;
- (3) Comply with accreditation or certification standards which shall be met to receive reimbursement under Title XVIII or XIX of the Social Security Act as amended to December 31, 2004;
- (4) Respond to an emergency situation created by a natural disaster such as tornadoes, floods, fire, or explosions;
- (5) Improve physical conditions which are related to operational or functional deficiencies; or
- (6) Consolidate, merge, or join another health care or long-term service provider.

The replacement nursing facility shall be located within fifteen miles of the existing facility, if the existing facility is located in a first-class municipality. If the existing facility is located outside of a first-class municipality, the replacement facility must be located within sixty miles of the existing facility.

Source: SL 2005, ch 180, § 2; SL 2019, ch 143, § 2; SL 2020, ch 141, § 1.

34-12-39.6. Closure of existing nursing facility--Availability of authorized beds.

Notwithstanding any other provisions of this chapter, if an existing nursing facility ceases operation, the authorized beds from that existing facility shall be held available by the department for eighteen months from the date the facility closes and shall be available for use by an entity licensed to operate a nursing facility pursuant to this chapter.

Source: SL 2019, ch 143, § 1.



Applicable Administrative Rules

44:72:01:01. Geographic area. An eligible proposal for additional nursing facility beds pursuant to SDCL [34-12-35.8](#) shall specify that the additional beds will be housed in a new or existing nursing facility located in an identified area of need in South Dakota.

Source: 39 SDR 119, effective January 8, 2013; 42 SDR 51, effective October 13, 2015; 46 SDR 11, effective July 29, 2019.

General Authority: SDCL [34-12-35.8\(2\)](#).

Law Implemented: SDCL [34-12-35.8\(2\)](#).



44:72:01:02. Population to be served. Any new or existing facility requesting additional nursing facility beds shall be either Medicare-certified, Medicaid-certified, or both, or have skilled nursing services available on-site. The skilled services shall be part of the facility's normal delivery of services. No new or existing facility requesting additional nursing facility beds may place any restriction on admissions as part of the facility's admissions agreement, other than those allowed in article 44:04.

Source: 39 SDR 119, effective January 8, 2013; 46 SDR 11, effective July 29, 2019.

General Authority: SDCL [34-12-35.8\(2\)](#).

Law Implemented: SDCL [34-12-35.8\(2\)](#).



44:72:02:01. Proposed viability. Upon request, any nursing facility that submits a proposal shall include a copy of the facility's audited financial statements. The audited financial statements shall be provided in the form of an independent auditor's report from the most recent fiscal period available. The audited financial statements shall demonstrate the facility's overall financial health and long term financial sustainability.

Source: 39 SDR 119, effective January 8, 2013; 46 SDR 11, effective July 29, 2019.

General Authority: SDCL [34-12-35.8\(3\)](#).

Law Implemented: SDCL [34-12-35.8\(3\)](#).



44:72:03:01. Local community support allowed. An eligible proposal requesting additional nursing facility beds pursuant to SDCL [34-12-35.8](#) may contain documentation of local community support for the proposals, including letters of support from health care providers in the service area, local government, and nonprofit associations or organizations.

Source: 39 SDR 119, effective January 8, 2013; 46 SDR 11, July 29, 2019.

General Authority: SDCL [34-12-35.8\(4\)](#).

Law Implemented: SDCL [34-12-35.8\(4\)](#).



44:72:04:01. Quality assurance requirements. An existing nursing facility that is a candidate for selection as a special focus facility by the Centers for Medicare and Medicaid Services is not eligible to receive additional nursing facility beds. An existing nursing facility that has received a deficiency, as measured by the Centers for Medicare and Medicaid Services, which is considered to be an immediate jeopardy to resident health and safety during the most recent certification or complaint survey is not eligible to receive additional nursing facility beds. An existing nursing facility that is currently operating under a provisional state license is not eligible to receive additional nursing facility beds, unless the provisional license only relates to construction or structural improvements currently in progress. Any facility submitting a proposal shall submit a copy of the facility's quality assurance program. It shall identify the following:

- (1) The members of the quality assurance committee by position;
- (2) How often the committee meets;
- (3) The guiding principles of the committee;
- (4) Committee member assignments;
- (5) The process of how the committee identifies concerns, implements corrective action, and monitors progress;

and

- (6) The methods that employees can use to submit quality improvement ideas to the committee.

Source: 39 SDR 119, effective January 8, 2013.

General Authority: SDCL [34-12-35.8\(5\)](#).

Law Implemented: SDCL [34-12-35.8\(5\)](#).

44:72:05:01. Workforce plan. An eligible proposal requesting additional nursing facility beds pursuant to SDCL [34-12-35.8](#) shall contain a detailed workforce plan that outlines how the nursing facility will meet the facility's workforce needs.

Source: 39 SDR 119, effective January 8, 2013.

General Authority: SDCL [34-12-35.8\(7\)](#).

Law Implemented: SDCL [34-12-35.8\(7\)](#).



44:72:05:02. Nurse aide training program. An eligible proposal shall include a nursing facility-based certified nurse aid training program, or an acceptable alternative.

Source: 39 SDR 119, effective January 8, 2013.

General Authority: SDCL [34-12-35.8\(7\)](#).

Law Implemented: SDCL [34-12-35.8\(7\)](#).



Moratorium-Related Legislation (Annual Report Page 7)

Year	Legislation	Bill #
1988	Moratorium initially enacted for 3 years	HB 1186
1991	Moratorium extended for 2 years	SB 253
1993	Moratorium extended for 2 years	HB 1098
1995	Moratorium extended for 5 years	SB 208
2000	Moratorium extended for 5 years	HB 1040
2003	Exception to Moratorium for Reservations	HB 1210
2005	Moratorium Extended Indefinitely	SB 38
2010	Exception to Moratorium for Pine Ridge	SB 157
2010	Allowing for bed-splitting between two facilities.	SB 69
2010	Allowing for East-River Veterans Home	SB 69
2012	Allowing for redistribution of existing nursing facility beds	SB 196
2016	Allowing White River NH to relocate to Rosebud, SD	SB 138
2016	Allowing 24 additional beds to Michael J. Fitzmaurice Veterans Home	SB 148
2019	Authorizing the beds from an existing nursing facility that ceases operation to be held available for 18 months for use by a licensed nursing facility.	SB 61
2019	Allowing 2 additional beds to Michael J. Fitzmaurice Veterans Home	SB 158
2020	Authorization to construct a new nursing home in Moody County.	SB 160
2022	Authorization to construct a new nursing facility in Lyman County.	SB 147

Request for Proposals

(Annual Report Pages 8-10)

2013 RFP

- First RFP issued
- Identified area of need – Rapid City
- 20 nursing facility beds made available
- Two proposals received – Successful bidder was Golden Living (operating 4 facilities in Rapid City), all 20 beds awarded.

2015 RFP

- Areas of need – Rapid City and Sioux Falls
 - Special care needs included: bariatric residents, residents requiring behavioral health services, residents who may be a risk to themselves or others, residents with tracheostomy care needs, and residents requiring an extended stay in a nursing facility.
- 30 nursing facility beds made available for Rapid City
- 24 nursing facility beds made available for Sioux Falls
- Two proposals received for Rapid City and three for Sioux Falls – All 30 beds were awarded to Good Samaritan Society for Rapid City. All 24 beds were awarded to Avera Prince of Peace for Sioux Falls.

Request for Proposals Cont.

2017 RFP

- Areas of need – Rapid City and Sioux Falls, potential for limited need in other areas of the state, development of additional home and community-based options.
- 75 facility beds made available for Rapid City
- 75 facility beds made available for Sioux Falls
- 41 facility beds were made available to other South Dakota communities
- Two proposals were received for Rapid City and three proposals for other communities (Parkston, Hot Springs, and Philip). No proposals for Sioux Falls were received.
- Awarded: Good Samaritan Society (Rapid City – 30 beds); Avera Bormann Manor (Parkston – 2 beds); Fall River Health Services (Hot Springs – 11 beds); and Philip Health Services (Philip – 12 beds).

2018 RFP

- Areas of need – Statewide
 - Two letters of intent received. However, no proposals were submitted.
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Request for Proposals Cont.

2019 RFP

- Areas of need – Statewide
- RFP issued open and continuous for FY19. No proposals received.
- In July 2019, Covington Care and Rehabilitation Center (109 beds) in Sioux Falls ceased operations. The Department sent out notice of availability of the 109 beds pursuant to SDCL § 34-12-39.6 and invited any nursing home facility provider interested in obtaining authority for the use of some or all the beds to submit a proposal. A total of 107 beds were awarded.

2020 RFP

- Areas of need – Statewide
- Notice of availability of beds pursuant to SDCL § 34-12-39.6 was issued. Bed made available 18 months from date of facility closure (Hudson Care and Rehab Center). No proposals or interest received.

Request for Proposals Cont.

2021 RFP

- Areas of need – Statewide
- RFP issued open and continuous for until June 30, 2022 or until all available beds have ben reallocated. No proposals received.

2022 RFP

- Areas of need – Statewide
 - RFP issued and continuous until June 30, 2023 or until all available beds have been reallocated. No proposals received as of 6/9/23.
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Medicare & Medicaid – Licensure & Certification

The same regulations are used for licensing and certification of nursing facilities (NF) and skilled nursing facilities (SNF).

DIFFERENCES

- Surveyors would not see Medicare level of care in a nursing facility so physician coverage may be different. Federal regulations dictate physician coverage and allowable services by non-physician practitioners.
- RN staffing waivers
 - If requested by a NF, DOH has the ability to review the request and approve or deny.
 - If requested by a SNF, DOH reviews and makes recommendation to CMS for CMS to review and approve/deny.

LTC Facilities for Veterans

The Department of Health (DOH) provides oversight of the Michael J. Fitzmaurice Veterans Home through contract with the Centers for Medicare and Medicaid (CMS).

CMS provides direct oversight of the VA Medical Center and any services provided within the hospital (including LTC). The DOH does not conduct recertification surveys for the VA Medical Center.

If construction of new facilities, renovation of existing facilities, or addition of new beds, the DOH would be involved in planning and approval from an engineering, health, and safety perspective.

References

Article 44:72 Redistribution of Nursing Home Beds
<https://sdlegislature.gov/Rules/Administrative/44:72>

Annual Report on the Need for Additional Nursing Facility Bed or Nursing Facilities 2022
[Licensure and Certification - SD Dept. of Health](#)

Moratorium Beds Request for Proposal (RFP)
[STATE OF SOUTH DAKOTA \(sd.gov\)](#)

Department of Human Services Occupancy Report
[SD Department of Human Services](#)



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