

**Summary of Moratorium-Related Legislation**

| 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  |

**Redistribution of Existing Nursing Facility Beds**

To address areas in the State where additional nursing home beds are needed, legislation was enacted in 2012 to enable the Department of Health and Department of Human Services to reallocate unused nursing home beds to identified areas of need through the statutory Request for Proposals (RFP) process (SDCL §§ 34-12-35.6 to 34-12-35.9 – see Appendix I).

In accordance with the legislation, the Department of Health may authorize a facility to have additional beds or may authorize the construction of a new nursing facility, so long as the total number of nursing facility beds statewide does not exceed the total number of beds in existence when the moratorium was indefinitely extended in 2005 (SDCL § 34-12-35.6). Therefore, the beds that are eligible for redistribution come from nursing facilities that have closed since 2005, or from facilities who have voluntarily relinquished excess moratorium beds. To date, there have been 18 nursing facilities that have closed since 2005 accounting for a total of 1,113 beds, and a total of 54 beds have been voluntarily relinquished by existing facilities. Two additional facilities have announced closure in 2023.

State law requires the Department of Health, with assistance from the Department of Human Services to annually consider the need for additional beds or nursing facilities in the State (SDCL § 34-12- 35.7). In doing so, the following factors are required to be taken into consideration:

- 1) Current number of available beds and nursing facilities;
- 2) Current and projected need for additional beds and facilities and the State's current long term care needs;

- 3) Number of beds available for redistribution and the number of beds that have already been redistributed;
- 4) Potential impact on existing nursing facilities;
- 5) Additional costs to the state or general public; and
- 6) Other current and projected long term care needs across the state.

If a need for additional beds or nursing facilities is identified, the Department of Health is required to solicit and evaluate proposals to address the identified need (SDCL § 34-12-35.8). In doing so, the Department is required to utilize the statutory RFP process and criteria established in SDCL §§ 5-18D-17 to 5-18D-20. The Department has also been granted rulemaking authority to establish additional criteria specific to the identified need. In 2019, the Department updated its administrative rules to minimize and clarify the requirements around proposals for additional nursing facility beds. The changes include permitting the proposal for additional nursing home beds to identify the area of need (i.e., not limiting the redistributed beds to communities in or near Sioux Falls or Rapid City), made the inclusion of documentation of local community support in the proposal optional, and removed the requirement that every proposal include the submission of audited financial statements. These were made to permit the market to identify unmet long term health care needs in specific areas of the state as well as to simplify the proposal process.

Any facility that receives redistributed beds, or any authorized new facility, is required by statute to maintain its current Medicaid occupancy rate for the facility's existing beds and is also required to maintain an annual minimum Medicaid occupancy rate no less than 10% below the statewide average for the newly authorized beds (SDCL § 34-12-35.8).

### **Consideration of Need for Additional Beds or Facilities**

When considering the need for additional beds or new facilities, the Department of Health and Department of Human Services utilize two key sources of information the 2015 Evaluation of Long Term Care Options for South Dakota report that was prepared by Abt Associates, Inc., and data from the most recent Occupancy Report. Additionally, information from the Department of Human Services staff regarding nursing facility placement difficulties is also taken into consideration. The data from these sources of information is broken down and evaluated. Based on the identified need and in consideration of the statutory factors to consider, the scope of the RFP is determined.

### **2013 Request for Proposals**

Following the passage of SB 196 in 2012, the first RFP for nursing facility bed redistribution was issued. The identified area of need was the City of Rapid City and a total of 20 additional nursing facility beds were made available. As a result of the RFP, two proposals were submitted, and all 20 beds were ultimately awarded. The successful bidder was Golden Living, which at the time operated four facilities located in Rapid City. All four of the Golden Living facilities are now operated by Avantara/Legacy HealthCare. All 20 beds are currently being utilized by these facilities.

### **2015 Request for Proposals**

In 2015, the second RFP for nursing facility bed redistribution was issued. The identified areas of need included the communities of Rapid City and Sioux Falls. The evaluation determined that several specifically identified special care needs also needed to be addressed. These special care needs

included: 1) bariatric residents; 2) residents requiring behavioral health services; 3) residents who may be a risk to themselves or others; 4) residents with tracheostomy care needs; and 5) residents requiring an extended stay in a nursing facility. Therefore, the RFP requested respondents to identify in their proposals their commitment to work to address these special care needs. To address the identified areas of need, a total of 30 beds were made available for Rapid City and 24 beds made available for Sioux Falls. As a result of the RFP, two proposals for Rapid City and three proposals for Sioux Falls were submitted. Ultimately, all 30 beds were awarded for Rapid City and all 24 beds were awarded for Sioux Falls. The successful bidders were Avera Prince of Peace (Sioux Falls – 24 beds) and Good Samaritan Society (Rapid City – 30 beds). The 24 beds awarded to Avera Prince of Peace were utilized within the first year after the award and continue to be utilized. The Good Samaritan Society project required new construction. That facility was built and became licensed in the Fall of 2017.

### **2017 Request for Proposals**

In July of 2017, the third RFP for nursing facility bed redistribution was issued. The identified areas of need once again included the communities of Rapid City and Sioux Falls. Additionally, it was recognized that there may be limited need for additional nursing facility capacity other areas of the State. As in 2015, the evaluation determined that several specifically identified special care needs also needed to be addressed. These special care needs included: 1) bariatric residents; 2) residents requiring behavioral health services; 3) residents who may be a risk to themselves or others; 4) residents with tracheostomy care needs; and 5) residents requiring an extended stay in a nursing facility. (Appendix II provides the regional analysis results.) A need for the development of additional home and community-based options was also identified. Therefore, the RFP requested respondents to identify in their proposals their commitment to work to address both special care needs and their organization's efforts to develop home and community-based options.

To address the identified areas of need, up to 75 beds were made available for Rapid City, up to 75 beds were made available for Sioux Falls, and up to 41 beds were made available to other South Dakota communities (excluding Rapid City and Sioux Falls). As a result of the RFP, two proposals were submitted for the available beds in Rapid City and three proposals were submitted for other communities (specifically Parkston, Hot Springs, and Philip). No proposals for Sioux Falls were received.

As a result of the RFP process, a Notice of Intent to Award was issued identifying one of the Rapid City proposals as a successful bidder and all three of the Other Community proposals as successful bidders. A total of 55 beds were requested by the successful bidders. The successful bidders included: 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). Each facility was expected to have the awarded beds available and in use within 24 months.

### **2018 Request for Proposals**

In October of 2018, the fourth RFP for nursing facility bed redistribution was issued. While the analysis indicated that both Rapid City and Sioux Falls continue to be areas of need for additional nursing facility capacity, it was again recognized that there could be instances of need for additional nursing facility capacity in other areas of the State. Therefore, for the purposes of the 2018 RFP, the area of need was identified as being statewide. Initially, two Letters of Intent were received in the response to the RFP. However, no proposals requesting additional nursing facility beds were received as a result of the 2018 RFP.