



SOUTH DAKOTA DEPARTMENT OF HEALTH  
**Annual Report on the Need for  
Additional Nursing Facility Bed  
or Nursing Facilities**

## Contents

Executive Summary.....	3
Purpose of the Report.....	6
History of the Moratorium.....	6
Summary of Moratorium-Related Legislation.....	7
Redistribution of Existing Nursing Facility Beds.....	7
Consideration of Need for Additional Beds or Facilities .....	8
2013 Request for Proposals.....	8
2015 Request for Proposals.....	8
2017 Request for Proposals.....	9
2018 Request for Proposals.....	9
2019 Request for Proposals.....	10
2020 Request for Proposals.....	10
2021 Request for Proposals.....	10
2022 Request for Proposals.....	10
2023 Request for Proposals.....	10
Senate Bill 61, 2019 Legislative Session .....	10
APPENDIX I.....	12
APPENDIX II.....	14

## Executive Summary

In 2016, an interim legislative committee was empaneled to review various issues around the regulation of nursing facility and assisted living facility beds. One of the bills that came out of the interim committee was Senate Bill 6 (SB 6). SB 6 sought to review the process to determine the need for additional nursing facilities or nursing facility beds and to require an annual report to the Legislature.

Ultimately, SB 6 was passed during the 2017 Legislative Session and subsequently codified into SDCL § 34-12-35.11. In compliance with SDCL § 34-12-35.11, the purpose of this report is to inform the Senate and House Standing Committees on Health and Human Services of the work that has been done to date in considering additional nursing facility beds or new nursing facilities, and other long-term health care needs.

The nursing facility moratorium was originally enacted in 1988. The moratorium caps the number of nursing facility beds per facility and overall statewide. The purpose of the moratorium was to help control skyrocketing long term health care costs, to make sure our elderly received the most appropriate level of long term care, and to spur further growth of home-based and community-based services such as home health care, assisted living centers, and residential living centers. The moratorium has proven to be effective in spurring the growth of long term care options.

Over the years, several exceptions to the moratorium as well as new measures have been passed to allow for flexibility under the moratorium. Most notably, legislation was enacted in 2012 that enables 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. 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. 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 21 nursing facilities that have closed since 2005 accounting for a total of 1,263 moratorium beds, and a total of 54 beds have been voluntarily relinquished by existing facilities.

In accordance with state law, the Department of Health, with assistance from the Department of Human Services annually considers the need for additional beds or nursing facilities in 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. Any facility that receives redistributed beds, or any authorized new facility, is required by law to maintain minimum Medicaid occupancy rates.

In July of 2019, the Department of Health proposed changes to the administrative rules pertaining to redistribution of nursing home beds 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.

When considering the need for additional beds or new facilities, the Department of Health and Department of Human Services utilize 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.

Prior to 2018, there were three previous rounds of nursing facility bed redistribution. In 2012, the first RFP was issued identifying Rapid City as the area of need. A total of 20 additional nursing facility beds were awarded through that process. In 2015, a second round of nursing facility bed redistribution was conducted that identified Rapid City and Sioux Falls as areas of need. A total of 30 beds were awarded for Rapid City and 24 beds awarded for Sioux Falls. In 2017, a third round of nursing facility bed redistribution was conducted that identified areas, once again, in the communities of Rapid City and Sioux Falls. Additionally, it was also recognized that there may be limited need for additional nursing facility capacity in other areas of the State. As a result of the 2017 RFP process, a total of 55 beds were awarded to facilities in the following communities: Rapid City (30 beds); Parkston (2 beds); Hot Springs (11 beds); and Philip (12 beds).

In 2018, the fourth RFP for nursing facility bed redistribution was issued. The identified area of need was determined to be statewide. No proposals requesting additional nursing facility beds were received as a result of the 2018 RFP.

In 2019, a fifth RFP for nursing facility bed redistribution was issued. The identified area of need was determined to be statewide. This RFP was issued open and continuous for the 2020 state fiscal year or until all available beds have been reallocated. No proposals were received as a result of the 2019 RFP.

In 2020, a sixth RFP for nursing facility bed redistribution was issued. The identified area of need was determined to be statewide. This RFP was issued open and continuous for the 2021 state fiscal year or until all available beds have been reallocated. No proposals were received as a result of the 2020 RFP.

In 2021, a seventh RFP for nursing facility bed redistribution was issued. The identified area of need was determined to be statewide. This RFP was issued open and continuous for the 2022 state fiscal year or until all beds have been reallocated. No proposals were received as a result of the 2021 RFP.

In 2022, an eighth RFP for nursing facility bed redistribution was issued. The identified area of need was determined to be statewide. This RFP was issued open and continuous for the 2023 state fiscal year or until all beds have been reallocated. No proposals were received as a result of the 2022 RFP.

In 2023, a ninth RFP for nursing facility bed redistribution was issued. The identified area of need was determined to be statewide. The RFP was issued open and continuous until June 30, 2024, or until all beds have been reallocated. As of the date of this report, no proposals have been received.

In addition, in the 2019 legislative session SB 61 was passed. SB 61 provided that if an existing nursing facility ceases operation, the authorized beds from that existing facility will be held available by the Department of Health for eighteen months from the closure date and shall be available for use by an entity licensed to operate a nursing facility. In July of 2019, Covington Care and Rehabilitation Center in Sioux Falls ceased operations. Covington Care had 109 beds. In July, the Department sent out notice of the availability of the 109 nursing facility beds due to the closure and invited any nursing home facility provider interested in obtaining authority for the use of some or all the Covington beds to submit a

proposal. A total of 107 of the beds have been awarded.

In December of 2019, Hudson Care and Rehab Center in Hudson closed. Hudson had 42 beds. A Notice of Availability of beds due to the closure of Hudson Care and Rehab Center for nursing facility pursuant SDCL § 34-12-39.6 was issued. The beds were available 18 months from the date of closure and could have been used by any licensed nursing facility providers. No proposals were received. These beds have passed the 18 month redistribution period and are now included in the moratorium bed count for RFP.

In 2022, six nursing facilities closed.

1. Monument Health Custer Care Center (76 beds) announced closure effective February 10, 2022
2. Avantara Ipswich (59 beds) announced closure effective June 1, 2022
3. Good Samaritan Society Lennox (64 beds) announced closure effective July 15, 2022
4. Good Samaritan Society Deuel County (75 beds) announced closure effective July 15, 2022
5. Avantara Salem (63 beds) announced closure effective October 1, 2022
6. Avantara Armour (45 beds) announced closure effective closure October 1, 2022

A Notice of Availability of beds was issued for facilities closed in 2022. Monument Health Custer Care Center beds have passed the 18 month redistribution period and are now included in the moratorium bed count for RFP. The remaining facility beds from 2022 closures are available 18 months from the date of closure pursuant to SDCL § 34-12-39.6 and may be used by any licensed nursing facility provider.

In 2023, three nursing facilities closed.

1. Prairie Estates Care Center Elk Point (50 beds) announced closure effective January 14, 2023
2. Avantara Arlington (52 beds) announced closure effective February 7, 2023
3. Bennett County Nursing Home (48 beds) announced closure effective October 13, 2023

A Notice of Availability of beds was issued for facilities closed in 2023. Pursuant to SDCL § 34-12-39.6, effective December 12, 2023, 76 beds were awarded to Custer Care and Rehab Center. As of the date of this report, there are 380 beds available 18 months from the date of closure and may be used for any licensed nursing facility provider. There are 625 beds available through RFP, totaling 1,005 total beds available for nursing facility providers through RFP or 18 month redistribution.

## Purpose of the Report

In 2016, an interim legislative committee was empaneled to review various issues around the regulation of nursing facility and assisted living facility beds. Senate Bill 6 (SB 6) was developed through the Interim Committee which sought to review the process to determine the need for additional nursing facilities or nursing facility beds and to require an annual report to the Legislature.

Ultimately, SB 6 was passed during the 2017 Legislative Session and subsequently codified into SDCL § 34-12-35.11. In compliance with SDCL § 34-12-35.11, the purpose of this report is to inform the Health and Human Services Senate and House Standing Committees of the work that has been done to date in considering additional nursing facility beds or new nursing facilities, and other long-term health care needs. Since this is the first report of its kind, additional background information regarding the history of the nursing home moratorium has been included.

## History of the Moratorium

The moratorium was originally enacted in 1988, the same year the state's Certificate of Need was repealed. The moratorium capped the number of nursing facility beds per facility and overall statewide. At that time the moratorium was enacted, South Dakota was one of the states with the highest number of nursing home beds per capita in the nation and there were also very few alternative long term care options available in the state at that time. Generally speaking, nursing home care is the highest, and most intensive, level of long term care, thereby making it one of the most costly types of long term care. The purpose of the moratorium was to help control skyrocketing long term health care costs, to make sure our elderly received the most appropriate level of long term care, and to spur further growth of home-based and community-based services such as home health care, assisted living centers, and residential living centers.

The moratorium was extended a number of times over the years, and in 2005 it was extended indefinitely. Over the years, the moratorium has proven to be effective in spurring the growth of long term care options. Today, in addition to the 97 nursing homes currently operating in South Dakota, there are 27 home health care agencies, 158 assisted living centers, 26 residential living centers, and 6 community living homes.

Although the moratorium capped the number of nursing home beds for facilities, a number of individual providers have for various reasons chosen not to utilize all the beds available to them under the moratorium. In fact, of the 7,070 moratorium beds allocated to South Dakota nursing facilities, only 5,763 of those beds are currently licensed and operational. Furthermore, statewide, approximately 81.7% of the licensed beds are currently occupied.

While the moratorium has historically proven to be sound public policy and is supported by the long term care industry overall, there are certainly instances where additional beds and/or nursing facilities are legitimately needed. To address these situations, several exceptions to the moratorium and several new measures have been passed to allow for some flexibility under the moratorium.

## 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 21 nursing facilities that have closed since 2005 accounting for a total of 1,263 beds, and a total of 54 beds have been voluntarily relinquished by existing facilities.

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.

## 2019 Request for Proposals

In 2019, a fifth RFP for nursing facility bed redistribution was issued. The identified area of need was determined to be statewide. This RFP was issued open and continuous for the 2019 state fiscal year or until all available beds have been reallocated. No proposals were received as a result of the 2019 RFP. In July of 2019, Covington Care and Rehabilitation Center in Sioux Falls ceased operations. Covington Care had 109 beds. In July, the Department sent out notice of the availability of the 109 nursing facility beds due to the closure and invited any nursing home facility provider interested in obtaining authority for the use of some or all of the Covington beds to submit a proposal. A total of 107 of the beds were awarded.

## 2020 Request for Proposals

In 2020, a Notice of the Availability of beds due to the closure of Hudson Care and Rehab Center for nursing facility pursuant SDCL 34-12-39.6 was issued. The beds were available 18 months from the date of closure and could have been located within 60 miles from the Hudson facility. No proposals were received.

## 2021 Request for Proposals

An RFP for nursing facility bed redistribution was issued. The identified area of need was determined to be statewide. This RFP was issued open and continuous for the 2022 state fiscal year or until all available beds have been reallocated. No proposals were received as a result of the 2021 RFP.

## 2022 Request for Proposals

An RFP for nursing facility bed redistribution was issued. The identified area of need was determined to be statewide. This RFP was issued and continuous for the 2023 state fiscal year or until all available beds have been allocated. No proposals were received as a result of the 2022 RFP.

## 2023 Request for Proposals

An RFP for nursing facility bed redistribution was issued. The identified area of need was determined to be statewide. This RFP was issued and continuous until June 30, 2024 or until all beds have been reallocated. As of the date of this report, no proposals have been received.

## Senate Bill 61, 2019 Legislative Session

In addition, in the 2019 legislative session SB 61 was passed. SB 61 provided that if an existing nursing facility ceases operation, the authorized beds from that existing facility will be held available by the Department of Health for eighteen months from the closure date and shall be available for use by an entity licensed to operate a nursing facility. In July of 2019, Covington Care and Rehabilitation Center in Sioux Falls ceased operations. Covington Care had 109 beds. In July, the Department sent out notice of the availability of the 109 nursing facility beds due to the closure and invited any nursing home facility provider interested in obtaining authority for the use of some or all the Covington beds to submit a proposal. A total of 107 of the beds have been awarded.

In December of 2019, Hudson Care and Rehab Center in Hudson closed. Hudson had 42 beds. A Notice of

Availability of beds due to the closure of Hudson Care and Rehab Center for nursing facility pursuant SDCL § 34-12-39.6 was issued. The beds were available eighteen months from the date of closure and could have been used by any licensed nursing facility providers. No proposals were received. These available beds are now included in the moratorium bed count.

In 2022, six nursing facilities closed.

1. Monument Health Custer Care Center (76 beds) announced closure effective February 10, 2022
2. Avantara Ipswich (59 beds) announced closure effective June 1, 2022
3. Good Samaritan Society Lennox (64 beds) announced closure effective July 15, 2022
4. Good Samaritan Society Deuel County (75 beds) announced closure effective July 15, 2022
5. Avantara Salem (63 beds) announced closure effective October 1, 2022
6. Avantara Armour (45 beds) announced closure effective closure October 1, 2022

A notice of availability of beds was issued for facilities closed in 2022. Monument Health Custer Care Center beds have passed the eighteen month redistribution period and are now included in the moratorium bed count for RFP. The remaining facility beds from 2022 closures are available eighteen months from the date of closure pursuant to SDCL § 34-12-39.6 and may be used by any licensed nursing facility provider.

In 2023, three nursing facilities closed.

1. Prairie Estates Care Center Elk Point (50 beds) announced closure effective January 14, 2023
2. Avantara Arlington (52 beds) announced closure effective February 7, 2023
3. Bennett County Nursing Home (48 beds) announced closure effective October 13, 2023

A notice of availability of beds was issued for facilities closed in 2023. Pursuant to SDCL § 34-12-39.6, effective December 12, 2023, 76 beds were awarded to Custer Care and Rehab Center. As of the date of this report, there are 380 beds available eighteen months from the date of closure and may be used for any licensed nursing facility provider. There are 625 beds available through RFP, totaling 1,005 total beds available for nursing facility providers through RFP or eighteen month redistribution.

## APPENDIX I

### Applicable State Statutes

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**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.

**34-12-39.6. 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.

**34-12-39.2. Limit on new nursing facilities.** 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 is required in order 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 created by a natural disaster such as tornadoes, floods, fire, or explosions; or
- (5) Improve physical conditions which are related to operational or functional deficiencies.

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.

## APPENDIX II

### Consideration of Need for Additional Nursing Facility Capacity

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#### ALL REGIONS (Statewide Data)

##### Abt Report

2015 total Bed Need: 6,795

Moratorium Beds/Licensed Beds: 7,070/5763 (6,892 licensed beds in 2015)

Estimated Bed Need (moratorium/licensed): - 275/1,032

##### Occupancy Report

Occupied Licensed Beds: 4,711 (6,134 in 2015)

Percent of Occupied Licensed Beds Statewide: 81.7%

Unoccupied Licensed Beds: 1,052 (758 in 2015)

Percent of Unoccupied Licensed Beds Statewide: 18.3%

#### REGION 1 (Rapid City/Northern Hills)

##### Abt Report

2015 total Bed Need: 1,352

Moratorium Beds/Licensed Beds: 911/832 (816 licensed beds in 2015)

Estimated Bed Need (moratorium/licensed): 441/520

##### Occupancy Report

Occupied Licensed Beds: 681 (750 in 2015)

Percent of Total Occupied Licensed Beds Statewide: 14.4%

Unoccupied Licensed Beds: 151 (66 in 2015)

Percent of Total Unoccupied Licensed Beds Statewide: 13.2%

#### REGION 2 (Hot Springs/Kadoka)

##### Abt Report

2015 total Bed Need: 304

Moratorium Beds/Licensed Beds: 169/151 (249 licensed beds in 2015)

Estimated Bed Need (moratorium/licensed): 135/153

### **Occupancy Report**

Occupied Licensed Beds: 139 (225 in 2015)  
Percent of Total Occupied Licensed Beds Statewide: 2.9%  
Unoccupied Licensed Beds: 12 (24 in 2015)  
Percent of Total Unoccupied Licensed Beds Statewide: 2.9%

## **REGION 3 (Pierre/Philip/North Central SD)**

### **Abt Report**

2015 total Bed Need: 443  
Moratorium Beds/Licensed Beds: 484/420 (464 licensed beds in 2015)  
Estimated Bed Need (moratorium/licensed): -41/23

### **Occupancy Report**

Occupied Licensed Beds: 313 (391 in 2015)  
Percent of Total Occupied Licensed Beds Statewide: 6.6%  
Unoccupied Licensed Beds: 107(73 in 2015)  
Percent of Total Unoccupied Licensed Beds Statewide: 9.4%

## **REGION 4 (Winner/Gregory/Chamberlain/White River)**

### **Abt Report**

2015 total Bed Need: 262  
Moratorium Beds/Licensed Beds: 214/186 (218 licensed beds in 2015)  
Estimated Bed Need (moratorium/licensed): 48/76

### **Occupancy Report**

Occupied Licensed Beds: 131 (196 in 2015)  
Percent of Total Occupied Licensed Beds Statewide: 2.8%  
Unoccupied Licensed Beds: 55 (22 in 2015)  
Percent of Total Unoccupied Licensed Beds Statewide: 4.8%

## **REGION 5 (Aberdeen/Northeast SD)**

### **Abt Report**

2015 total Bed Need: 1,087



Moratorium Beds/Licensed Beds: 1,464/1,145 (1,394 licensed beds in 2015)  
Estimated Bed Need (moratorium/licensed): -377/-58

### **Occupancy Report**

Occupied Licensed Beds: 922 (1,216 in 2015)  
Percent of Total Occupied Licensed Beds Statewide: 19.5%  
Unoccupied Licensed Beds: 223 (173 in 2015)  
Percent of Total Unoccupied Licensed Beds Statewide: 19.5%

## **REGION 6 (Huron/Brookings/Mitchell)**

### **Abt Report**

2015 total Bed Need: 1,102  
Moratorium Beds/Licensed Beds: 1,431/1,078 (1,383 licensed beds in 2015)  
Estimated Bed Need (moratorium/licensed): -329/24

### **Occupancy Report**

Occupied Licensed Beds: 872 (1,219 in 2015)  
Percent of Total Occupied Licensed Beds Statewide: 18.4%  
Unoccupied Licensed Beds: 206 (164 in 2015)  
Percent of Total Unoccupied Licensed Beds Statewide: 18%

## **REGION 7 (Southeast & South Central SD)**

### **Abt Report**

2015 total Bed Need: 809  
Moratorium Beds/Licensed Beds: 971/837 (1,037 licensed beds in 2015)  
Estimated Bed Need (moratorium/licensed): -162/-28

### **Occupancy Report**

Occupied Licensed Beds: 700 (947 in 2015)  
Percent of Total Occupied Licensed Beds Statewide: 14.8%  
Unoccupied Licensed Beds: 137 (90 in 2015)  
Percent of Total Unoccupied Licensed Beds Statewide: 12%

## **REGION 8 (Sioux Falls/Beresford/Dell Rapids/Centerville)**

**Abt Report**

2015 total Bed Need: 1,435

Moratorium Beds/Licensed Beds: 1,426/1,114 (1,331 licensed beds in 2015)

Estimated Bed Need (moratorium/licensed): 9/321

**Occupancy Report**

Occupied Licensed Beds: 953 (1,185 in 2015)

Percent of Total Occupied Licensed Beds Statewide: 20.1%

Unoccupied Licensed Beds: 161 (146 in 2015)

Percent of Total Unoccupied Licensed Beds Statewide: 14.1%