

State of South Dakota

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NINETY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2017

363Y0015 #15

HOUSE BILL NO. _____

Introduced by: _____

1 FOR AN ACT ENTITLED, An Act to establish a program to assist nursing facilities in
2 recruiting certain health care personnel.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That the code be amended by adding a NEW SECTION to read:

5 The Department of Health may establish a program to assist communities statewide in
6 recruiting licensed practical nurses, nurse aides, or medication aides.

7 Section 2. That the code be amended by adding a NEW SECTION to read:

8 A community eligible to participate in the recruitment assistance program is any community
9 in this state which:

10 (1) Agrees to provide its portion of the incentive payment pursuant to the provisions of
11 this Act; and

12 (2) Is determined to be eligible by the Department of Health.

13 Before making a determination of eligibility, the Department of Health shall conduct a
14 community assessment designed to evaluate the community's need and its ability to sustain and
15 support the additional licensed practical nurses, nurse aides, or medication aides. The
16 department shall maintain a list of communities which have been assessed and that are eligible



1 for participation in the recruitment assistance program established by this Act, inclusive. The
2 department may revise any community assessment or conduct a new assessment as necessary
3 to reflect any change in conditions within a community.

4 Section 3. That the code be amended by adding a NEW SECTION to read:

5 A licensed practical nurse may participate in the recruitment assistance program, established
6 by this Act, inclusive, if the practical nurse is licensed pursuant to chapter 36-9 and if the
7 licensed practical nurse agrees to practice in an eligible community for a minimum period of
8 three years. However, no more than fifteen licensed practical nurses may participate in the
9 program at any specified time.

10 A nurse aide may participate in the recruitment assistance program, established by this Act,
11 inclusive, if the nurse aide has registered with the Department of Health and if the nurse aide
12 agrees to practice in an eligible community for a minimum period of three years. However, no
13 more than fifteen nurse aides may participate in the program at any specified time.

14 A medication aide may participate in the recruitment assistance program, established by this
15 Act, inclusive, if the medication aide has registered with the Board of Nursing and if the
16 medication aide agrees to practice in an eligible community for a minimum period of three
17 years. However, no more than fifteen medication aides may participate in the program at any
18 specified time.

19 Section 4. That the code be amended by adding a NEW SECTION to read:

20 Any licensed practical nurse, nurse aide, or medication aide who fulfills the requirements
21 of the recruitment assistance program established pursuant to this Act, inclusive, may receive
22 an incentive payment not to exceed five thousand dollars.

23 Section 5. That the code be amended by adding a NEW SECTION to read:

24 Any agreement for the payment of recruitment assistance pursuant to this Act shall obligate

1 the community to provide fifty percent of the incentive payment to any licensed practical nurse,
2 nurse aide, or medication aide. When the community certifies to the secretary of health that it
3 has paid the full amount for which the community is obligated, the secretary of health shall pay
4 to the licensed practical nurse, nurse aide, or medication aide the remaining balance of the total
5 incentive payment amount. The secretary shall pay the required amount out of funds
6 appropriated by the Legislature for such purpose. The incentive payment shall be paid upon
7 completion of the required three-year practice period by the licensed practical nurse, nurse aide,
8 or medication aide. However, a community may pay its portion of the incentive payment at any
9 time during the three-year period.

10 Section 6. That the code be amended by adding a NEW SECTION to read:

11 Any municipality or county may appropriate funds for the purpose of carrying out the
12 provisions of this Act.

13 Section 7. That the code be amended by adding a NEW SECTION to read:

14 No recruitment assistance agreement entered into pursuant to the provisions of this Act is
15 effective until it is filed with and approved by the secretary of health. The secretary may
16 prescribe the format of the agreements and procedures for approval.

17 Section 8. That the code be amended by adding a NEW SECTION to read:

18 No person may participate in the program established pursuant to the provisions of this Act
19 if the person has previously participated in any program, or any other state or federal
20 scholarship, loan repayment, or tuition reimbursement program that obligates the person to
21 provide medical services within an underserved area.

22 Section 9. That the code be amended by adding a NEW SECTION to read:

23 Any person participating in the program established pursuant to the provisions of this Act
24 shall be employed by a nursing facility or assisted living facility licensed pursuant to chapter 34-

1 12.

State of South Dakota

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NINETY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2017

444Y0021 # 21

SENATE BILL NO. _____

Introduced by: _____

1 FOR AN ACT ENTITLED, An Act to require the Department of Health and Department of
2 Social Services to make an annual report to the Legislature regarding the condition of long-
3 term health care in South Dakota.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That chapter 34-12 be amended by adding a NEW SECTION to read:

6 The Department of Health and the Department of Social Services shall, before the fourth
7 Tuesday in January of each year, report to the Senate and House standing committees on health
8 and human services concerning the current and projected long-term health care facility needs
9 across the state. The report shall describe the activities of each department for the previous
10 calendar year and shall include:

11 (1) The current and projected future need for additional nursing facility beds and nursing
12 facilities;

13 (2) The number of nursing facility beds available for redistribution and the number of
14 nursing facility beds redistributed pursuant to this chapter;

15 (3) Any recommendations relating to nursing facility regulation or other long-term care
16 issues; and



- 1 (4) Other information requested by the committee or other information that the
- 2 department deems appropriate to provide to the committees.

State of South Dakota

NINETY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2017

840Y0026 # 26

HOUSE BILL NO. _____

Introduced by: _____

1 FOR AN ACT ENTITLED, An Act to allow nursing facilities to transfer or sell nursing bed
2 capacity.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 34-12 be amended by adding a NEW SECTION to read:

5 Notwithstanding the provisions of §§ 34-12-35.4 to 34-12-35.9, inclusive, a licensed nursing
6 facility may transfer nursing bed capacity owned by the licensee to another facility. A licensed
7 nursing facility may sell nursing bed capacity to another facility. The receiving facility shall
8 license the transferred or purchased beds within twenty-four months of the transfer or sale. The
9 receiving facility shall:

10 (1) Have an annual minimum Medicaid occupancy rate no less than fifty percent below
11 the statewide average at the time rates are established for the newly licensed beds;
12 and

13 (2) Have an approved program or affiliation with a home and community-based care
14 provider for the receiving facilities service area.

15 For the purposes of this section, the term, receiving facility, means the facility that obtained
16 nursing home beds through a transfer between facilities owned by a licensee or purchased beds



1 from a facility owned by another licensee.

State of South Dakota

NINETY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2017

930Y0032 # 32

SENATE BILL NO. _____

Introduced by: _____

1 FOR AN ACT ENTITLED, An Act to allow for the redistribution of unused nursing facility bed
2 capacity.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. A nursing facility may use any of the nursing facility's unused bed capacity. After
5 July 1, 2018, any unused bed capacity shall revert to the Department of Health.

6 Section 2. Before July 1, 2023, a nursing facility may submit a proposal to use any of the
7 nursing facility's previously held unused bed capacity. The Department of Health shall utilize
8 the process and criteria established in §§ 34-12-35.6 to 34-12-35.9, inclusive, to determine the
9 need for additional nursing facility beds.



State of South Dakota

NINETY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2017

840Y0035 # 35

HOUSE BILL NO. _____

Introduced by: _____

1 FOR AN ACT ENTITLED, An Act to revise the review for additional nursing facilities or
2 nursing facility beds and to require a report to the Legislature.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 34-12-35.7 be amended to read:

5 34-12-35.7. The Department of Health, with assistance from the Department of Social
6 Services, may shall annually consider the need for additional nursing facility beds or additional
7 new nursing facilities or both in defined areas of the state. ~~In doing so, the~~ The following factors
8 shall be taken into consideration:

- 9 (1) The current number of available nursing facility beds and nursing facilities in the
10 defined area;
- 11 (2) The current and projected future need for additional nursing facility beds and nursing
12 facilities in the defined area and the current long-term care needs of the population
13 to be served;
- 14 (3) The potential impact on existing nursing facilities; and
- 15 (4) Any additional costs to the state or general public that may result.

16 Section 2. That chapter 34-12 be amended by adding a NEW SECTION to read:



1 The Department of Health and the Department of Social Services shall, before the fourth
2 Tuesday in January of each year, report to the Senate and House standing committees on health
3 and human services concerning the consideration of additional nursing facility beds or
4 additional new nursing facilities pursuant to § 34-12-35.7.

State of South Dakota

NINETY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2017

327Y0043 # 43

SENATE BILL NO. _____

Introduced by: _____

1 FOR AN ACT ENTITLED, An Act to make an appropriation to provide certain incentive
2 payments to nursing facilities and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. There is hereby appropriated from the general fund the sum of two hundred
5 seventy-three thousand dollars (\$273,000), or so much thereof as may be necessary, to the
6 Department of Health for the purpose of providing incentive payments to nursing facilities that
7 relinquish excess unlicensed moratorium beds.

8 Section 2. The incentive payment authorized by this Act shall be paid on each relinquished
9 bed and may not exceed two percent of the lowest per diem rate for each nursing facility.

10 Section 3. The secretary of the Department of Health shall approve vouchers and the state
11 auditor shall draw warrants to pay expenditures authorized by this Act.

12 Section 4. Any amounts appropriated in this Act not lawfully expended or obligated shall
13 revert in accordance with the procedures prescribed in chapter 4-8.

14 Section 5. Whereas, this Act is necessary for the support of the state government and its
15 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
16 full force and effect from and after its passage and approval.



State of South Dakota

NINETY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2017

642Y0045 # 45

HOUSE BILL NO. _____

Introduced by: _____

1 FOR AN ACT ENTITLED, An Act to remove the moratorium on the number of nursing facility
2 beds permitted in the state.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 34-12-35.4 be repealed.

5 ~~34-12-35.4. No nursing facility in this state may operate more than the number of beds~~
6 ~~authorized by the Department of Health pursuant to this chapter and in existence on July 1,~~
7 ~~2005.~~

8 Section 2. That § 34-12-35.5 be amended to read:

9 34-12-35.5. The Department of Social Services shall designate access critical nursing
10 facilities annually as part of the medicaid rate setting process. The department shall designate
11 the access critical nursing facilities according to the following criteria:

12 (1) No other nursing facility is located within twenty miles;

13 (2) The nursing facility is located in the largest municipality within thirty-five miles,
14 unless the next closest nursing facility is located more than fifty miles from any other
15 nursing facility;

16 (3) The nursing facility provides skilled nursing facility services;



1 (4) The nursing facility is integrated with other health care services, either through
2 affiliation with other services or through formal agreement; and

3 (5) The projected nursing facility demand within the county in which the facility is
4 located is less than sixty beds in 2015; and

5 ~~(6) The nursing facility agrees to relinquish any excess moratorium beds that are~~
6 ~~authorized pursuant to § 34-12-35.4.~~

7 Section 3. That § 34-12-35.6 be repealed.

8 ~~34-12-35.6. Notwithstanding the provisions of §§ 34-12-35.4 and 34-12-39.2, the~~
9 ~~Department of Health may authorize the increase in the number of beds in an existing nursing~~
10 ~~facility or may authorize the construction of a new nursing facility as defined in § 34-12-1.1, so~~
11 ~~long as the total number of nursing facility beds statewide does not exceed the total number of~~
12 ~~beds in existence statewide on July 1, 2005.~~

13 Section 4. That § 34-12-35.7 be repealed.

14 ~~34-12-35.7. The Department of Health, with assistance from the Department of Social~~
15 ~~Services, may annually consider the need for additional nursing facility beds or additional new~~
16 ~~nursing facilities or both in defined areas of the state. In doing so, the following factors shall be~~
17 ~~taken into consideration:~~

18 ~~(1) The current number of available nursing facility beds and nursing facilities in the~~
19 ~~defined area;~~

20 ~~(2) The current and projected future need for additional nursing facility beds and nursing~~
21 ~~facilities in the defined area and the current long-term care needs of the population~~
22 ~~to be served;~~

23 ~~(3) The potential impact on existing nursing facilities; and~~

24 ~~(4) Any additional costs to the state that may result.~~

1 Section 5. That § 34-12-35.8 be repealed.

2 ~~—34-12-35.8. If a need for additional nursing facility beds or additional new nursing facilities~~
3 ~~or both in a defined area is identified by the Department of Health in accordance with § 34-12-~~
4 ~~35.7, the department shall solicit and evaluate proposals to address the identified need. In doing~~
5 ~~so the department shall utilize the process and criteria established in §§ 5-18D-17 to 5-18D-20,~~
6 ~~inclusive. Additionally, the Department of Health may promulgate rules pursuant to chapter 1-~~
7 ~~26 to establish additional criteria specific to the identified need. The rules may include criteria~~
8 ~~pertaining to:~~

9 ~~—(1) Minimum nursing facility occupancy rates;~~

10 ~~—(2) Unique characteristics of the area and population to be served;~~

11 ~~—(3) Proposal viability, including financial business plan information and payor source~~
12 ~~information;~~

13 ~~—(4) Local community support for the proposed project;~~

14 ~~—(5) Benchmarks for quality assurance;~~

15 ~~—(6) Additional services to be provided; and~~

16 ~~—(7) Ability to meet workforce needs.~~

17 Section 6. That § 34-12-35.9 be repealed.

18 ~~—34-12-35.9. Notwithstanding the provisions of § 34-12-35.4, an existing nursing facility as~~
19 ~~defined in § 34-12-1.1 may increase its number of beds with prior authorization by the~~
20 ~~Department of Health in accordance with §§ 34-12-35.6 to 34-12-35.8, inclusive. Any existing~~
21 ~~nursing facility authorized to increase its number of beds in accordance with §§ 34-12-35.6 to~~
22 ~~34-12-35.8, inclusive, shall maintain its current Medicaid occupancy rate for the facility's~~
23 ~~existing beds, and shall maintain an annual minimum Medicaid occupancy rate no less than ten~~
24 ~~percent below the statewide average at the time rates are established for the newly authorized~~

1 beds:

2 Section 7. That § 34-12-35.10 be repealed.

3 ~~34-12-35.10. Notwithstanding the provisions of § 34-12-35.4, the Department of Veterans~~
4 ~~Affairs may increase the number of nursing facility beds at the Michael J. Fitzmaurice Veterans~~
5 ~~Home. The total number of beds the nursing facility may operate may not exceed seventy-six.~~

6 Section 8. That § 34-12-37 be repealed.

7 ~~34-12-37. A nursing facility which limits its admissions to only those persons who have~~
8 ~~resided in an adjacent self-care living unit operated by the nursing facility for at least one year,~~
9 ~~which also maintains an endowment to provide nursing bed care for such persons who are~~
10 ~~unable to pay the cost of nursing care, and which does not participate in medicaid may change~~
11 ~~not more than ten assisted living center beds to nursing beds after June 30, 1992.~~

12 Section 9. That § 34-12-39.2 be repealed.

13 ~~34-12-39.2. No new nursing facility may be constructed, operated, or maintained in this state~~
14 ~~unless the nursing facility is serving as a replacement for an existing facility and is required in~~
15 ~~order to:~~

16 ~~(1) Eliminate or prevent imminent safety hazards as defined by federal, state, or local~~
17 ~~fire, building, or life safety codes or regulations;~~

18 ~~(2) Comply with state licensure standards;~~

19 ~~(3) Comply with accreditation or certification standards which shall be met to receive~~
20 ~~reimbursement under Title XVIII or XIX of the Social Security Act as amended to~~
21 ~~December 31, 2004;~~

22 ~~(4) Respond to an emergency situation created by a natural disaster such as tornadoes,~~
23 ~~floods, fire, or explosions; or~~

24 ~~(5) Improve physical conditions which are related to operational or functional~~

1 deficiencies:

2 Section 10. That § 34-12-39.4 be repealed.

3 ~~34-12-39.4. Notwithstanding the provisions of § 34-12-39.2, a new nursing facility as~~
4 ~~defined in § 34-12-1.1 may be constructed, operated, and maintained as part of an existing~~
5 ~~nursing facility licensed under chapter 34-12 if:~~

6 ~~(1) The new nursing facility is located within fifteen miles of the existing nursing~~
7 ~~facility;~~

8 ~~(2) The combined bed capacity of both the licensed existing nursing facility and the new~~
9 ~~nursing facility do not exceed the total number of beds afforded to the existing~~
10 ~~nursing facility under § 34-12-35.4; and~~

11 ~~(3) Both the existing nursing facility and the new nursing facility serve medicaid~~
12 ~~residents and both facilities independently maintain an annual minimum medicaid~~
13 ~~occupancy rate no less than ten percent below the state-wide average at the time rates~~
14 ~~are established.~~

15 ~~For the purposes of medicaid reimbursement, the facility shall submit a combined annual~~
16 ~~cost report to include the combined costs for both the existing nursing facility and the new~~
17 ~~nursing facility. Medicaid reimbursement rates shall be calculated using the combined cost~~
18 ~~report, and rates will be subject to the ceilings and limitations set forth in rules promulgated~~
19 ~~pursuant to § 28-6-1. The existing facility's medicaid reimbursement rate shall be used to~~
20 ~~establish the overall ceiling as outlined in rules promulgated pursuant to § 28-6-1. The existing~~
21 ~~nursing facility is limited to construction of one new facility under this section.~~

22 Section 11. That § 34-12-39.5 be repealed.

23 ~~34-12-39.5. Notwithstanding the provisions of § 34-12-39.2, a new nursing facility as~~
24 ~~defined in § 34-12-1.1 may be constructed, operated, and maintained with prior authorization~~

1 by the Department of Health in accordance with §§ 34-12-35.6 to 34-12-35.8, inclusive. Any
2 new nursing facility authorized in accordance with §§ 34-12-35.6 to 34-12-35.8, inclusive shall
3 maintain an annual minimum Medicaid occupancy rate no less than ten percent below the
4 statewide average at the time rates are established.

5 Section 12. That § 34-12-56 be repealed.

6 ~~—34-12-56. Notwithstanding the provisions of §§ 34-12-35.4 and 34-12-39.2, a new nursing~~
7 ~~facility as defined in § 34-12-1.1 may be constructed, operated, and maintained on any~~
8 ~~American Indian reservation that is wholly or partially located west of the one hundred second~~
9 ~~meridian if the facility is needed to serve a local population previously unserved through lack~~
10 ~~of nursing facilities within a forty-five-mile radius. No more than one such nursing facility may~~
11 ~~be located within the same American Indian reservation, and the number of beds in the nursing~~
12 ~~facility may not exceed fifty. The nursing facility shall meet the specifications of this chapter~~
13 ~~for a licensed nursing facility in order to participate in the Medicaid program.~~

14 ~~—No state funds may be used for the construction of a nursing facility built pursuant to this~~
15 ~~section.~~