

Testimony on Nursing and Basic Care Facilities Moratorium
Senate Human Services Committee
March 5, 2025
House Bill 1154

Good afternoon, Chair Lee and members of the Human Services Committee. My name is Nikki Wegner, President of the North Dakota Long Term Care Association. We represent 182 assisted living, basic care, and skilled nursing facilities in North Dakota. Thank you for the opportunity to provide testimony in support of extending the moratorium on nursing facility and basic care beds for an additional four years.

Background and Purpose of the Moratorium

Historically, North Dakota has maintained one of the highest numbers of nursing home beds per capita in the United States. In 1995, the state implemented a moratorium to control bed capacity, preventing unnecessary expansion and encouraging a more balanced approach to long term care. Over time, this policy has successfully reduced licensed nursing facility beds from a peak of 7,124 to 4,978 today.

The moratorium has evolved to meet the needs of North Dakotans, allowing for strategic bed transfers and conversions. This flexibility has facilitated the addition of basic care beds in underserved areas and the conversion of nursing facility beds to basic care, while avoiding overbuilding that could destabilize existing facilities.

Why Extend the Moratorium?

Extending the moratorium for four more years is critical for the following reasons:

- **Preventing Overcapacity and Financial Instability:** Unchecked expansion of nursing and basic care beds risks financial instability for existing providers, particularly in rural areas. Overcapacity can dilute Medicaid and Medicare reimbursement rates, jeopardizing the financial sustainability of these facilities. States with similar moratorium policies have successfully controlled costs while maintaining high-quality care.
- **Stabilizing Workforce and Care Quality:** Workforce shortages remain a critical challenge in the long-term care sector. Adding beds would worsen staffing shortages and risk care quality. A moratorium supports focused efforts on workforce recruitment, retention, and training to strengthen the current system before expansion.
- **Public Preference and Federal Compliance:** Many North Dakotans prefer to receive care at home or in community-based settings rather than facilities. The moratorium has allowed

resources to be redirected toward expanding home- and community-based services, aligning with federal expectations under the 2020 Department of Justice settlement, which mandates timely access to community-based care.

- **Promoting Strategic Resource Use and Sustainability:** A moratorium ensures existing resources, such as layaway beds, are prioritized to meet demand efficiently. Expanding capacity prematurely creates inefficiencies and unsustainable costs. Facilities can focus on improving infrastructure and services within current capacities, promoting thoughtful, sustainable growth.

Addressing Misconceptions

It is important to note that the moratorium does not create barriers for necessary expansions. Exceptions are in place to address specific needs, such as increasing basic care beds in underserved areas or converting nursing facility beds to basic care. These provisions demonstrate that the moratorium is not a one-size-fits-all policy but rather a strategic tool tailored to North Dakota's unique needs.

Conclusion

Our membership voted unanimously to extend the moratorium for the next four years. Extending the moratorium for four more years is a prudent and necessary step to ensure the long-term viability of North Dakota's long term care system. It allows the state to continue its thoughtful approach to capacity planning, prioritize community-based care, and protect the financial stability of existing facilities.

I urge the committee to support this extension and continue the legacy of sustainable and high-quality care for all North Dakotans. Thank you for your time and consideration. I am happy to answer any questions.

Respectfully submitted,

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HISTORY OF NURSING FACILITY MORATORIUM/CERTIFICATE OF NEED (CON)

- 1991** Limited Certificate of Need (CON) process. This allowed an average of 74 beds to be added per year from 1977 to 1991.
- 1993** Effective 5-6-93 any expansion of physical plant, bed capacity or of services by a nursing facility or basic care facility or any conversion of beds from any other licensure category to any category of long term care became subject to a full review under the CON program.
- 1995** Eliminate the CON process for all entities and implemented a nursing facility and basic care bed moratorium.
- 1997** Continued moratorium but now allowed transfer and sale between facilities. For each nursing facility or basic care bed transferred/sold after 8-1-97 there must be a reduction of beds by the same numbered transferred/sold.
- 1999** Continued moratorium and the transfer/sale of beds as long as for every bed sold/transferred, another is deleted from the system.
Law also clarified beds released by a facility where they are not immediately sold to another facility may not be banked for future use.
- 2001** Nursing facility moratorium is continued. Transfer/sale of beds is allowed as long as for each bed transfer/sold, one is reduced.
Allows an existing facility to sell/transfer beds to another facility and provided for the facility receiving the beds to seek licensure within 24 months rather than immediately. Moratorium for basic care is changed and expansion of basic care is allowed under three conditions.
- 1) Allows a nursing facility to convert nursing facility beds to basic care beds.
 - 2) Allows the pilot dementia beds to convert to basic care.
 - 3) Allows any applicant to receive approval if they can demonstrate to the Department of Health and Department of Human Services that a need exists for additional basic care bed capacity.
- 2003** Basic care moratorium remains in place with same two exceptions, based on need and allows a nursing facility to convert beds to basic care.
Nursing facility moratorium remains in place with change made in sell/transfer provision. Basic care and nursing facilities allowed to sell/transfer beds without losing a bed in the transaction.

- 2005** Basic care moratorium and two exceptions continue in place. Transferred/sold basic care beds are now given 48 months rather than 24 months to put beds in service.

Nursing facility moratorium continues with an exception. A nursing facility that converted beds to basic care is now allowed to change those beds back to skilled. Transferred/sold beds are now allowed 48 months to become licensed.

- 2007** Basic care and nursing moratorium is extended (with the exceptions). A provision was added to the “need” exception process for basic care, preference for free beds will be given to entities that agree to participate in the basic care assistance program. A study of the nursing facility moratorium is mandated. Study concludes moratorium should continue.

- 2009** Basic care and nursing facility moratorium is extended (with the exceptions).

- 2011** Basic care and nursing facility moratorium is extended (with the exceptions). Requires the State Health Council to study the bed recommendations and determines if changes should be made to better serve the state.

Nursing Facility Bed Layaway Program is started. Nursing facilities can layaway up to 25% of their beds annually for a maximum of 24 months.

- 2013** Basic care and nursing facility moratorium is extended (with the exceptions).

- 2015** Basic care and nursing facility moratorium is extended (with current exceptions).

- 2017** Basic care and nursing facility moratorium is extended (with current exceptions).

- 2019** Moratorium

Extends the basic care and nursing facility moratorium through July 31, 2021.

Sales

Extends from 48 months to 72 months the time to put a nursing facility or basic care bed into service once it is sold or transferred.

Bed Layaway

Extends from 24 months to 48 months the time a nursing facility bed can be laid away. Basic care does not have a layaway process for beds as they do not have a minimum occupancy requirement thus they don’t need a layaway program.

Nursing Facility Beds in Existing Sale/Transfer

A nursing facility bed sold or transferred before July 1, 2019 must be relicensed by the receiving entity within a 72 month period established at the time of transfer/sale.

Nursing Facility Beds in Existing Layaway Program

A nursing facility bed in the layaway program before July 1, 2019 may remain in the program for 48 months from the time the bed was first laid away.

- 2021** The legislation allows nursing facilities to delicense a maximum of 30% of their beds annually but may not delicense more than 50% of their total beds. The delicensed beds can be held in bed layaway for a maximum of 4 years. Delicensed bed capacity not sold or relicensed at the conclusion of the 4 year holding period will cease to exist. During or at the end of the four-year holding period of delicensure the facility may:
- Relicense the beds and put them back into service within their facility.
 - The beds can be brought back into service after six months; however, they must meet the federal requirements of bringing beds back into service.
 - Transfer or sell the nursing facility beds as either basic care or nursing facility beds. Whoever buys or receives the beds must license the bed capacity within 6 years. If the nursing facility beds are sold/transferred as basic care beds, they may never revert back to nursing facility beds. The receiving entity who receives the beds may further sell or transfer the beds to another entity, but all must occur within the original 6 year period established at the time of the original transfer. The subsequent receiving entity must license the beds within that 6 year period.
 - License as basic care beds by the original facility. If the license basic care beds remain in the same facility and are not transferred, the beds may be reverted back to licensed nursing facility beds annually.
- 2023** Basic care and nursing facility moratorium is extended until July 31, 2025. The current basic care exceptions continue to exist. The two exceptions are: basic care beds can be added under these two circumstances:
- A nursing facility converts nursing facility beds to basic care.
 - An entity demonstrates to the department that basic care services are not readily available within a designated area of the state or that existing basic care beds within a fifty-mile radius have been occupied at ninety percent or more for the previous twelve months. In determining whether basic care services will be readily available if an additional license is issued, preference may be given to an entity that agrees to participate in any program established by the department for individuals eligible for services under the medical assistance program under title XIX of the Social Security Act.