

**Senate File 527 - Introduced**

SENATE FILE 527  
BY CELSI

**A BILL FOR**

- 1 An Act relating to nursing facility staffing requirements.
- 2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

unofficial

1 Section 1. NEW SECTION. **135.35D Nursing facilities —**  
2 **staffing requirements.**

3 1. For purposes of this section:

4 a. "*Certified nurse aide training program*" means the same as  
5 defined in section 135C.33.

6 b. "*Nurse aide*" means a person who successfully completed a  
7 certified nurse aide training program.

8 c. "*Physician*" means a person licensed under chapter 148.

9 d. "*Registered nurse*" means a person licensed under chapter  
10 152 or 152E.

11 e. "*Resident assessment*" means a resident assessment  
12 conducted under 42 C.F.R. §483.20.

13 f. "*Resident care plan*" means the contract between a nursing  
14 facility and a resident that outlines how the nursing facility  
15 will provide care for the resident.

16 2. A nursing facility must have sufficient staff with the  
17 appropriate competencies and skill sets to provide nursing care  
18 and related services to ensure resident safety and attain the  
19 highest practicable physical, mental, and psychosocial well-being  
20 of each resident, as determined by resident assessments and  
21 individual resident care plans and considering the number,  
22 acuity, and diagnoses of the nursing facility's residents.

23 3. a. A nursing facility shall provide nursing care on a  
24 twenty-four-hour basis in accordance with each resident care plan  
25 by employing sufficient numbers of each of the following types of  
26 personnel:

27 (1) Licensed nurses.

28 (2) Other nursing personnel, including but not limited to  
29 nurse aides.

30 b. A nursing facility shall designate a licensed nurse to  
31 serve as a charge nurse on each tour of duty. The charge nurse  
32 shall assume leadership responsibility by overseeing nursing care  
33 and addressing immediate concerns within the nursing facility.

34 c. A nursing facility shall ensure that licensed nurses have  
35 the specific competencies and skill sets necessary to care for

1 residents' needs, as identified through resident assessments and  
2 described in each resident care plan.

3 d. For purposes of this subsection, "nursing care" includes  
4 but is not limited to assessing, evaluating, planning, and  
5 implementing resident care plans and responding to residents'  
6 needs.

7 4. a. A nursing facility must provide a minimum of three and  
8 forty-eight hundredths hours per resident per day for total nurse  
9 staffing, including but not limited to the following:

10 (1) A minimum of fifty-five hundredths hours per resident per  
11 day for registered nurses.

12 (2) A minimum of two and forty-five hundredths hours per  
13 resident per day for nurse aides.

14 b. Paragraph "a" shall not be construed as setting minimum  
15 staffing levels.

16 5. a. A nursing facility shall have a registered nurse on  
17 site twenty-four hours per day that is available to provide  
18 direct resident care.

19 b. For any periods when the requirement in paragraph "a"  
20 is exempted under subsection 11, a nursing facility shall  
21 have a registered nurse, a physician assistant licensed under  
22 chapter 148C, or a physician available to respond immediately to  
23 telephone calls from the nursing facility.

24 c. A nursing facility shall designate a registered nurse to  
25 serve as the director of nursing on a full-time basis. The  
26 director of nursing may serve as a charge nurse only when the  
27 nursing facility has an average daily occupancy of sixty or fewer  
28 residents.

29 6. A nursing facility shall employ or contract with at least  
30 one physician that will evaluate each resident for wounds and  
31 infections on a weekly basis. The physician shall treat or  
32 recommend a treatment for each of a resident's identified wounds  
33 and infections.

34 7. A nursing facility shall ensure that nurse aides are able  
35 to demonstrate competency in skills and techniques necessary

1 to care for residents' needs as identified through resident  
2 assessments and described in each resident care plan.

3 8. a. Before employing an individual as a nurse aide,  
4 a nursing facility shall verify that the individual has met  
5 competency evaluation requirements unless any of the following  
6 apply:

7 (1) The individual is a full-time employee in a certified  
8 nurse aide training program.

9 (2) The individual can prove that the individual has recently  
10 completed a certified nurse aide training program and has not  
11 yet been included in the department's nurse aide registry.  
12 A nursing facility shall ensure that the individual actually  
13 becomes included in the nurse aide registry.

14 b. Before employing an individual as a nurse aide, a nursing  
15 facility shall obtain information from every state registry  
16 established under section 1819(e)(2)(A) or 1919(e)(2)(A) of the  
17 federal Social Security Act that the nursing facility has reason  
18 to believe will include information on the individual.

19 c. If an individual has not provided nursing care or  
20 related services for monetary compensation for the most recent  
21 twenty-four consecutive months, the individual shall complete  
22 another certified nurse aide training program.

23 d. A nursing facility shall conduct a performance review  
24 of every nurse aide at least once every twelve months, and  
25 shall provide regular in-service education based on the outcome  
26 of these reviews. In-service training shall comply with the  
27 requirements of 42 C.F.R. §483.95(g).

28 9. a. The department may waive the requirements of  
29 subsection 3, paragraph "a", or subsection 4, paragraph "a",  
30 subparagraph (1), or subsection 5, paragraph "a", for a nursing  
31 facility that is unable to meet the requirements if all of the  
32 following apply:

33 (1) The nursing facility demonstrates that the nursing  
34 facility has been unable, despite diligent efforts, to recruit  
35 appropriate personnel. Diligent efforts shall include but not be

1 limited to offering wages at the community prevailing rate for  
2 nursing facilities.

3 (2) The department determines that a waiver of the  
4 requirement will not endanger the health or safety of the nursing  
5 facility's residents.

6 (3) The department determines that, for any periods in which  
7 licensed nursing care is not available, a registered nurse or a  
8 physician is obligated to respond immediately to telephone calls  
9 from the nursing facility.

10 b. A waiver granted under paragraph "a" is subject to annual  
11 department review.

12 c. In granting or renewing a waiver, the department may  
13 require a nursing facility to use other qualified, licensed  
14 personnel.

15 d. The department shall provide notice of a waiver granted  
16 under paragraph "a" to the office of long-term care ombudsman  
17 established under section 231.42, and a representative of the  
18 protection and advocacy agency designated by the state under  
19 section 135C.2.

20 e. A nursing facility that is granted a waiver under  
21 paragraph "a" shall notify its residents and the residents'  
22 representatives of the waiver.

23 10. a. The department may waive the requirement that a  
24 nursing facility provide the services of a registered nurse for  
25 more than forty hours per week, including a director of nursing  
26 specified in subsection 5, paragraph "c", if the department finds  
27 all of the following:

28 (1) The nursing facility is located in a rural area and the  
29 supply of nursing facility services in the area is not sufficient  
30 to meet the needs of individuals residing in the area.

31 (2) The nursing facility has one full-time registered nurse  
32 who is regularly on duty at the facility forty hours per week.

33 (3) Any of the following apply to the nursing facility:

34 (a) The nursing facility only has patients whose physicians  
35 have indicated that they do not require the services of a

1 registered nurse or a physician for a forty-eight-hour period.

2 (b) The nursing facility has made arrangements for a  
3 registered nurse or a physician to spend time at the nursing  
4 facility, as determined necessary by the physician, to provide  
5 necessary skilled nursing care on days when the regular full-time  
6 registered nurse is not on duty.

7 b. The department shall provide notice of a waiver granted  
8 under paragraph "a" to the office of long-term care ombudsman  
9 established under section 231.42, and a representative of the  
10 protection and advocacy agency designated by the state under  
11 section 135C.2.

12 c. A nursing facility that is granted a waiver under  
13 paragraph "a" shall notify its residents and the residents'  
14 representatives of the waiver.

15 d. A waiver of the registered nurse requirement under  
16 paragraph "a" is subject to annual renewal by the department.

17 11. a. The department may waive the requirements under  
18 subsection 4, paragraph "a", or subsection 5, paragraph "a",  
19 for a nursing facility if a hardship exists that prohibits the  
20 nursing facility from achieving or maintaining compliance and the  
21 nursing facility meets the following criteria:

22 (1) The nursing facility is located in an area where the  
23 supply of health care staff is not sufficient to meet area  
24 needs as evidenced by a provider-to-population ratio for the  
25 nursing workforce that is a minimum of twenty percent below  
26 the national average, as calculated by the federal centers for  
27 Medicare and Medicaid services. If the ratio of a nursing  
28 facility's registered nurse and nurse aide population compared to  
29 the population of the surrounding geographic area is a minimum  
30 of twenty percent below the national average, the department may  
31 waive any of the following:

32 (a) The total nurse staffing requirements under subsection 4,  
33 paragraph "a".

34 (b) The hours per resident per day requirement under  
35 subsection 4, paragraph "a", subparagraph (1).

1 (c) The hours per resident per day requirement under  
2 subsection 4, paragraph "a", subparagraph (2).

3 (d) Up to eight hours per day from the on-site registered  
4 nurse requirement under subsection 5, paragraph "a".

5 (2) The nursing facility demonstrates that it has been  
6 unable, despite diligent efforts, to recruit and retain  
7 appropriate personnel. Evidence of diligent efforts include but  
8 are not limited to all of the following:

9 (a) Wages offered at the community prevailing rate for  
10 nursing facilities.

11 (b) Jobs listed in commonly used recruitment forums found  
12 online and other forums as appropriate.

13 (c) Documented job vacancies including the number and  
14 duration of the vacancies and documentation of offers made at  
15 least at the community prevailing rate for nursing facilities.

16 (d) Data on the average wages in the metropolitan statistical  
17 area in which the facility is located, and vacancies by industry  
18 as reported by the federal bureau of labor statistics or by the  
19 department of workforce development.

20 (e) Documentation of the nursing facility's financial  
21 resources that shows the amount the nursing facility expends on  
22 nurse staffing relative to revenue.

23 b. A nursing facility granted a waiver under paragraph "a"  
24 shall do all of the following:

25 (1) Post in a prominent location in the nursing facility, and  
26 in a form and manner accessible and understandable to residents  
27 and the residents' representatives, a notice of the nursing  
28 facility's exemption status, the extent to which the nursing  
29 facility does not meet the minimum staffing requirements, and the  
30 time frame during which the exemption applies.

31 (2) Provide to each resident or the resident's  
32 representative, and to each prospective resident or the  
33 prospective resident's representative, a notice of the nursing  
34 facility's exemption status, including the extent to which the  
35 nursing facility does not meet the staffing requirements, the

1 time frame during which the exemption applies, and a statement  
2 reminding residents of their rights to contact advocacy and  
3 oversight entities as provided in the notice provided to them  
4 under 42 C.F.R. §483.10(g)(4).

5 (3) Send a copy of the notice under subparagraph (2) to  
6 a representative of the office of long-term care ombudsman  
7 established under section 231.42.

8 c. A nursing facility is not eligible for a waiver under this  
9 subsection if any of the following apply:

10 (1) The nursing facility is a special focus facility,  
11 pursuant to the special focus facility program established  
12 under sections 1819(f)(8) and 1919(f)(10) of the federal Social  
13 Security Act.

14 (2) The nursing facility received a citation for having  
15 widespread insufficient staffing or a pattern of insufficient  
16 staffing that resulted in actual harm.

17 (3) The nursing facility received a citation for immediate  
18 jeopardy due to insufficient staffing.

19 (4) The nursing facility failed to submit payroll-based  
20 journal data in accordance with 42 C.F.R. §483.70(p).

21 d. A nursing facility shall provide documentation when  
22 requested by the department while the department determines  
23 the nursing facility's eligibility for a waiver under this  
24 subsection.

25 e. A waiver under this subsection shall be valid from the  
26 date the department grants the waiver until the date the nursing  
27 facility renews its license under this chapter. A nursing  
28 facility may apply to extend a waiver under this subsection each  
29 time the nursing facility applies to renew its license under this  
30 chapter.

31 12. a. A nursing facility shall post the following data on a  
32 daily basis:

33 (1) The nursing facility's name.

34 (2) The current date.

35 (3) The total number and the actual hours worked each shift

1 by the following categories of licensed and unlicensed nursing  
2 staff directly responsible for resident care:

3 (a) Registered nurses.

4 (b) Nurse aides.

5 (4) The number of the nursing facility's residents.

6 b. (1) A nursing facility shall post the data specified in  
7 paragraph "a" on a daily basis at the beginning of each shift.

8 (2) Data must be posted in a clear and readable format and  
9 in a prominent place readily accessible to residents, staff, and  
10 visitors.

11 c. A nursing facility shall, upon oral or written request,  
12 make the data specified in paragraph "a" available to the public  
13 for review at a reasonable cost.

14 d. A nursing facility shall maintain the data specified in  
15 paragraph "a" for a minimum of eighteen months.

16 13. The department shall adopt rules pursuant to chapter 17A  
17 to implement this section.

18 EXPLANATION

19 The inclusion of this explanation does not constitute agreement with  
20 the explanation's substance by the members of the general assembly.

21 This bill relates to nursing facility (facility) staffing  
22 requirements.

23 The bill defines "certified nurse aide training program",  
24 "nurse aide", "physician", "registered nurse", "resident  
25 assessment", and "resident care plan".

26 The bill requires facilities to have sufficient staff with the  
27 appropriate competencies and skill sets to provide nursing care  
28 and related services to ensure resident safety and attain the  
29 highest practicable physical, mental, and psychosocial well-being  
30 of each resident, as determined by resident assessments and  
31 individual resident care plans and considering the number,  
32 acuity, and diagnoses of the nursing facility's residents.

33 The bill requires facilities to provide nursing care on a  
34 24-hour basis to all residents in accordance with each resident  
35 care plan. The bill details the types of employees and types of

1 care a facility must provide.

2 The bill requires facilities to provide a minimum of 3.48  
3 hours per resident per day for total nurse staffing, including a  
4 minimum of 0.55 hours per resident per day for registered nurses  
5 and a minimum of 2.45 hours per resident per day for nurse aides.  
6 The minimum hours requirements are not to be construed as setting  
7 minimum staffing levels.

8 The bill requires facilities to have a registered nurse on  
9 site 24 hours per day that is available to provide direct  
10 resident care. If the department of inspections, appeals, and  
11 licensing (DIAL) waives the requirement for an on-site registered  
12 nurse for a facility, the facility must have a registered  
13 nurse, physician assistant, or physician available to respond  
14 immediately to telephone calls from the facility.

15 The bill requires facilities to designate a registered nurse  
16 to serve as the director of nursing on a full-time basis. The  
17 director of nursing may serve as a charge nurse only when the  
18 nursing facility has an average daily occupancy of 60 or fewer  
19 residents.

20 The bill requires facilities to employ or contract with at  
21 least one physician that will evaluate each resident for wounds  
22 and infections on a weekly basis. The physician shall treat or  
23 recommend a treatment for each of a resident's identified wounds  
24 and infections.

25 The bill requires facilities to ensure that nurse aides are  
26 able to demonstrate competency in skills and techniques necessary  
27 to care for residents' needs as identified through resident  
28 assessments and described in each resident care plan.

29 Before employing an individual as a nurse aide, a facility  
30 must verify that the individual has met competency evaluation  
31 requirements unless the individual is a full-time employee in  
32 a training and competency evaluation program, or the individual  
33 can prove that they recently completed a certified nurse aide  
34 training program and have not yet been included in DIAL's nurse  
35 aide registry. The facility must ensure that the individual

1 actually becomes included in the nurse aide registry.

2 Before employing an individual as a nurse aide, the bill  
3 requires a facility to obtain information from every state  
4 registry established under section 1819(e)(2)(A) or 1919(e)(2)(A)  
5 of the federal Social Security Act that the facility has reason  
6 to believe will include information on the individual.

7 The bill requires an individual to complete another training  
8 and competency evaluation program if the individual has  
9 not provided nursing care or related services for monetary  
10 compensation for the most recent 24 consecutive months.

11 The bill requires facilities to conduct a performance review  
12 of every nurse aide at least once every 12 months, and provide  
13 regular in-service education based on the outcome of these  
14 reviews. In-service training must comply with the requirements  
15 of 42 C.F.R. §483.95(g).

16 The bill authorizes DIAL to waive the certain staffing and  
17 hours of care per resident per day requirements for a facility  
18 if the facility demonstrates certain conditions exist. The bill  
19 details a facility's duties and DIAL's duties related to such  
20 waivers. The bill details when a facility is not eligible for a  
21 waiver due to hardship. A facility may apply to extend a waiver  
22 due to hardship each time the facility renews its license. All  
23 other waivers are subject to DIAL's annual review.

24 The bill requires facilities to post data detailed in the bill  
25 on a daily basis at the beginning of each shift, in a clear and  
26 readable format, and in a prominent place readily accessible to  
27 residents, staff, and visitors. Facilities must, upon oral or  
28 written request, make the data available to the public for review  
29 at a reasonable cost. Facilities must maintain the posted data  
30 for a minimum of 18 months.

31 The bill directs DIAL to adopt administrative rules to  
32 implement the bill.