

Memo

Date: February 27, 2024

To: Certification/Training Workgroup, Nursing Home Workforce Standards Board

From: Leah Solo

RE: Background on Waivers and Variances

At the February 8, 2024, Full Board meeting, the Board asked the Certification and Training workgroup to begin considering the process for waivers and variances from the standards that the Board will establish. Below is some guidance about the statutory language and suggestions for proceeding forward.

Statutory language

Minnesota Statutes section 181.213, subdivision 4 reads: “**Variance and Waiver.** The board shall adopt procedures for considering temporary variances and waivers of the established standards for individual nursing homes based on the board's evaluation of the risk of closure or receivership under section [144A.15](#), due to compliance with all or part of an applicable standard.” Below are some specific words or phrases that can give the Board direction moving forward.

- **Procedure:** The subdivision asks us to develop a procedure. This means the Board does not need to put this into rules, but need to have a process by which a nursing home can ask for a variance or waiver. This could include documentation, attestations, and conversations with the Board, among other things.
- **Temporary:** The variance and/or waiver should not be permanent.
- **Variance and waivers:** Naming this means that the Board can allow a nursing home to compensate at a rate lower than the applicable standard(s) or be completely exempt from the standard(s).
- **Board’s evaluation:** The board should have our own process for determining if a nursing home is at risk for closure or receivership.
- **Due to compliance with all or part of an applicable standard:** The risk of closure or receivership must come from compliance with all or part of a standard(s) that the Board sets. If the nursing home was at risk of closure or receivership for some other reason, that would not be a factor to consider.
- **Applicable standard:** The board would consider variance and waiver from the standard(s) causing the risk of closure or receivership.

The phrase “risk of closure or receivership under section 144A.15” also deserves some examination.

- **Risk of:** The possibility of suffering harm or loss; danger.; In this case a closure or receivership.
- **Closure:** a nursing home facility ceasing to be a nursing home.
- **Receivership under section 144A.15:** receivership under Minnesota Statutes section 144A.15 is a specific process whereby the Commissioner of Health takes control of a nursing facility. The reasons that this could happen vary from the nursing home being in the process of losing its license, violations of

federal law including the parts of the social security act governing nursing homes, risk of abandonment by the owner, failure to meet financial obligations, or actions by Centers for Medicare and Medicaid Services (CMS) to end their agreements with the facility. This process can end in closure of a facility, a new owner, or even renewal of the license.

Establishing a procedure

For the Board to grant a waiver or variance to a nursing home, the nursing home must be on the brink of closure or being taken over by the state.

In establishing a procedure, the Board may want to consider these questions:

- How could a nursing home establish a risk of closure or receivership?
- How could a nursing home establish that their dire situation is due to the standards that the Board is establishing?
- Will the Board establish different procedures for requesting a waiver vs. a variance, or will they be the same procedure?

The Board may want to direct staff to investigate where else there are variances or waivers allowed from Labor standards or other standards, either in Minnesota or in other states.