From:	Amy Porter
To:	RULES, DLI (DLI)
Subject:	Nursing Home Standards Board Holiday requirements comments
Date:	Friday, September 13, 2024 5:14:38 PM
Attachments:	NHWSB_CommentLetterHolidayCWOPostingRequirements.docx

Dear Ms. Solo,
Please see my attached letter of comments of the proposed rule for nursing homes to provide 11 holidays annually. Thank you for your attention to this matter.

Sincerely

--
Amy Porter, MS, LNHA, LALD
Administrator
Aftenro
510 College Street
Duluth, MN 55811
d. 218-728-6602 | aporter@aftenro.org
f. 218-728-5452

Date: September 27, 2024

OAH Docket Number: 28-9001-40213

Presiding Judge: Administrative Law Judge Joseph Meyer

Comment Period: August 26, 2024 through 4:30 p.m. on September 25, 2024

Re: Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 - 5200.2050.

I am the Administrator of Aftenro Home in Duluth MN.

Aftenro is home to 54 residents. We provide seniors 24 hours nursing care and other services. Aftenro was founded in 1921 because members of the community recognized that the community of Duluth had an unmet need, providing care for those elders in need. Many of Aftenro's first residents were immigrants from Norway who had no relatives to help care for them. Aftenro has been providing care for 103 years staying true to its mission of providing care to those in need. Aftenro is Medicaid certified only and relies on state funding to care for its residents.

The proposed rule mandates that a nursing home employee who works any of the specified eleven holidays is paid a minimum of time-and-one-half their regular hourly wage for all hours worked during the holiday. I oppose the proposed rule language and request a public hearing.

- The mandated eleven state holidays are **unfunded**. Minnesota's Medicaid nursing facility payment system uses a facility submitted cost report. After auditing, the Minnesota Department of Human Services (DHS) establishes Medicaid Rates on January 1 that reflect costs incurred 15 to 27 months prior.
- In other words, we are only paid today for the costs that we encountered up to two years ago. In addition, The Minnesota Department of Human Services sets our rates and tells us how much we can charge for our services. None of the reimbursement reflects costs incurred today or is the reimbursement reflective of the current market demands. Imagine yourself trying to purchase groceries today with two years ago value of money. You would not be able to afford the groceries today.

- Nursing facilities engage in annual budgeting processes that begin a full year in advance. The mandated state holidays are an unanticipated change and are an unplanned expenditure.
  We will encounter an additional $120,000.00 per year with no means of paying for those increases.

- The January 1, 2025 effective date allows little time to implement the mandated eleven holidays. Nursing facilities are open 24 hours a day, seven days a week, 365 days a year.

Planning and scheduling holidays requires detailed planning. Employees value certain holidays more than others. Employees also understand the inherent trade-offs of wanting to take Easter off will mean working on July 4. The proposed rule will become administrative law a month before the effective date.

- It is difficult to staff the six holidays that we currently recognize.

Thank you for your consideration.

Sincerely,
Amy Porter, Administrator Aftenro Home Duluth, MN

From:	Anne Major
To:	RULES, DLI (DLI)
Subject:	Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 – 5200.2050, Revisor's ID Number R-04870
Date:	Wednesday, September 4, 2024 10:37:34 AM
Attachments:	Outlook-gj3xilk5.png opposed fo holiday pay mandate.pdf

Please see attached comments opposing the entire proposed rule, Part 5200.2000 – 5200.2050, Revisor's ID Number R-04870, request for public hearing on this rule.

Anne Major, RN, MBA, LNHA, LALD | Executive Director
Benedictine Living Community Cold Spring
715 1st Street North | Cold Spring, MN 56320
P: 320.348.2320
www.benedictineliving.org

Leah Solo, Executive Director
Nursing Home Workforce Standards Board
443 Lafayette Rd. N.
St. Paul MN 55155

Reference: Comment to Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 – 5200.2050, Revisor's ID Number R-04870

Dear Executive Director Solo:

Thank you for the opportunity to comment on the proposed holiday pay proposed rule. I respectfully urge the Nursing Home Workforce Standards Board (the Board) to reconsider this misguided standard and rule.

To be clear, Benedictine Living Community Cold Spring has always supported our workers and their ability to earn a life-sustaining wage. However: it is the responsibility and obligation of our state's elected officials to fund these investments. That is why nursing homes like mine have called for funding to raise wages year after year. Specifically, during this past legislative session, HF3391/SF4130 would have provided funding to nursing homes for employee compensation via a rate increase, and at higher compensation levels than proposed by the Board. To my surprise and disappointment, this appropriation was not passed into law.

Absent leadership and support from the Legislative and Executive Branches, this proposed rule is an unfunded mandate that forces providers like me to afford these paid holidays and their wage rates by deferring funding to other needs that are critical to providing quality care for the seniors we serve.

The Board fails to consider, or worse ignores, critical facts and impacts in the development of these standards and moving forward with the standards as proposed could recklessly put the access of essential nursing home care in jeopardy for communities all over Minnesota. First, Minnesota is and will continue to experience a decline in workers1. Additionally, the Board has completely ignored the financial impacts to providers, including the limitations of state funding for nursing homes, such as a nearly 2-year delay in the recognition of new costs and the additional restrictions created by our rate equalization law. Most disappointingly and critically, the Board's standard fails to guarantee access to quality care for Minnesota's seniors and is likely to decrease access to services available to our state's older adults.
I want to focus on my serious concerns about the proposed holiday pay standard on the sustainability for this rule.

My name is Anne Major, I am the executive director for our campus and also an RN. I have worked in long term care for over 30 years. Our facility is part of a larger campus caring for up to 76 nursing home residents, 87 assisted living residents, 61 independent apartments, and additional seniors in the community through home health care.

Unfunded Mandate

The statute establishing this Board and the creation of standards also made clear that new standards should be funded with adequate funding before becoming effective. If the Board is going to require providers to pay time and a half for additional holidays, then lawmakers must take steps to fund the increased wage costs upfront and before the standard can take effect. Nursing homes cannot shoulder the burden these standards alone, especially when the state and federal governments are responsible for providing the funds to them.

- The holiday pay standard is an unfunded mandate.
- Developing and projecting a yearly budget in the last month of the calendar year will be impossible. Fiscal year budgets are already set focusing on quality, safety, and staff retention.

Financial Challenges

In a time of record wage inflation and market competition for workers, we cannot compete with retail, food service, or other industries, particularly given the unique role that our state and federal government partners have in supporting wages through Medicare and Medicaid. The Board is asking nursing homes to do the impossible – pay staff more without any additional funding.

The Medicaid and CHIP Payment and Access Commission has reported that current basic Medicaid rates only cover 86% of nursing home costs.2 We must ensure nursing homes are reimbursed for the true cost of the care they provide.

- Our nursing facility's Medicaid and Private Pay Rates are determined with allowable costs incurred between 15 to 27 months prior. Because of the auditing process, it is impossible for a nursing facility to know what their rates will be until the Minnesota Department of Human Services calculates 45-days prior to January 1 of each year.

  Our nursing facility is part of a campus with other services and living arrangements and that the costs associated with the holiday pay rule are not limited to nursing facilities. We will be forced to decide if we extend this across the entire campus, which will mean more expenses for our residents who live in assisted living or independent living.

· With the equalization of Medicaid and private pay rates, the state funded managed care programs for seniors (MSC + and MSHO), and Medicare, nearly all of our funding and rates are controlled by the state and federal governments. Unlike other businesses, we are unable to raise our prices to meet new expenses in the nursing home.

· We have already seen what a staffing shortage does in long term care. If we limit the number of staff due to inability to pay them higher wages and holiday wages due to this mandate there will be more nursing home closures. This will limit the available beds and create another backlog throughout our hospitals.

Implementation challenges

The effective date of January 1, 2025, for this rule is very problematic for our organization. In addition to the cost of adding new holidays, we currently offer some paid holidays that are not official state holidays. Based on the expected timeline for approval of this rule, we will have less than two months to receive feedback from employees and implement a new holiday schedule for 2025. Once that is done, we will have to adjust payroll practices and scheduling policies to implement the new holiday schedule. The Board's unwillingness to consider a more realistic implementation date show that they do not understand provider operations and the challenges they face in implementing major changes in an unrealistic time frame. We have had no requests from employees for more paid holidays.

In summary, this proposed standard requires nursing homes to pay holiday wages that are not currently part of reimbursement rates, meaning in simple terms it is an unfunded mandate. Tying the hands of providers by forcing employees to accept specific holidays will not achieve its intended impact. Such impacts will be directly felt by residents, their families, and communities as a result. Accordingly, we are opposed to this entire rule and request its disposition be resolved during a public hearing.

Thank you for considering my comments and request for public hearing.

Sincerely,
Anne Major, Executive Director
Benedictine Living Community Cold Spring

From:	Matthew Fischer
To:	RULES, DLI (DLI)
Subject:	OAH Docket Number: 28-9001-40213
Date:	Monday, September 23, 2024 8:42:13 AM
Attachments:	SKM_C360i24092307380.pdf

Please see attached.

Matthew Fischer, LNHA
Administrator
1020 Lark St. | Alexandria, MN 56308
P: 320.763.1133| **C:** 507.828.6364 | F: 320.759.6264
W: www.bethanyonthelake.com

BETHANY
ON THE LAKE

September 23, 2024

VIA EMAIL ONLY

Minnesota Department of Labor and Industry
Attn: Leah Solo
443 Lafayette Road North
Saint Paul, Minnesota 55155
dli.rules@state.mn.us

Re: Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 - 5200.2050
OAH Docket No. 28-9001-40213

Dear Honorable Judge Joseph Meyer:

I am writing as the Administrator of Bethany on the Lake, a skilled nursing facility located in Alexandria, MN. Our facility proudly employs over 200 individuals, and we also contract with vendors and agency staff when necessary to provide critical care to vulnerable populations, including elderly residents who depend on our services for daily living and medical support. Due to the nature of our operations, we encounter unique challenges in staffing and budgeting.

We oppose the proposed rule mandating that nursing home employees receive time-and-one-half pay for all hours worked during the eleven specified holidays, as we believe it will have several unintended consequences that will adversely impact both our facility and the people we serve.

1. **Financial Challenges**

In the current landscape of record wage inflation and heightened competition for workers, our facilities face significant financial challenges that hinder our ability to attract and retain qualified staff. Competing industries, such as retail and food service, often offer higher wages and more flexible working conditions, which makes it increasingly difficult for us to fill essential positions. The unique role that our state and federal government partners play in supporting wages through Medicare and Medicaid complicates this issue further.

The Board's proposal to mandate higher pay for staff without providing additional funding places an untenable burden on nursing homes. We are being asked to meet the expectations of improved worker compensation while grappling with the financial realities of our operational budgets. The Medicaid and CHIP Payment and Access Commission has reported that current basic Medicaid rates only cover approximately 86% of nursing home costs. This existing shortfall means that

many facilities are already operating at a financial disadvantage, struggling to cover the true costs of the care we provide.
To maintain the quality of care that our residents deserve, it is imperative that nursing homes receive reimbursement that accurately reflects the actual costs of delivering services. Without this essential support, the proposed rule could exacerbate existing financial strain, forcing facilities to make difficult decisions that ultimately impact the quality of care and services available to our vulnerable populations. We urge the Board to recognize these financial challenges and provide the necessary funding to support fair employee compensation while ensuring the sustainability of nursing home operations.

2. Staffing and Schedule Changes

Skilled nursing facilities operate around the clock, 365 days a year. Scheduling staff for holidays is a delicate process that often requires careful negotiation, as employees have different preferences for which holidays they value. The proposed rule mandating time-and-a-half pay for all hours worked during the 11 specified holidays would significantly reduce this scheduling flexibility, making it more challenging to meet staffing needs while accommodating employee preferences.

While the intent of higher holiday pay is to benefit employees, the uneven distribution of holiday shifts—driven by seniority and individual preferences—could lead to resentment among staff. Some employees may not prioritize certain holidays, while others might feel compelled to work on days that are significant to them. This imbalance could harm employee morale over time, leading to increased turnover, especially if staff feel pressured to work undesirable shifts despite the additional pay.

The lack of flexibility in scheduling, coupled with the potential for conflict among staff regarding holiday assignments, may also strain labor relationships and disrupt the cooperative environment that is vital to our operations. With our already limited resources and the complexities introduced by this rule, maintaining a positive workplace culture while ensuring adequate staffing levels during the holidays could become increasingly challenging. Ultimately, these staffing and scheduling challenges could further jeopardize the quality of care we provide to our residents, undermining our mission to support the vulnerable populations who depend on our services.

3. Vendor and Contracting Issues

Additionally, our facilities rely on outside vendors for critical services such as housekeeping, laundry, and dietary support. The proposed rule raises significant uncertainty regarding whether contract employees would be subject to the same holiday pay requirements. If these vendors are required to comply with the new rules, it would necessitate reopening and renegotiating existing vendor contracts, adding yet another layer of complexity and strain to our operations.

BETHANY
ON THE LAKE

The potential for increased costs associated with vendor compliance could further exacerbate the financial challenges we face, especially given our tight margins in rural areas where we operate. These renegotiations would not only consume valuable administrative resources but could also lead to disruptions in services during a time when stability is crucial for the well-being of our residents.

The necessity to navigate these contracting issues could distract our management teams from focusing on providing quality care and supporting our staff. As we strive to maintain the highest standards of service for our vulnerable populations, these additional burdens could compromise our mission and impact our ability to deliver essential services effectively.

4. **Implementation Challenges**

The January 1, 2025, effective date for this rule poses significant challenges for our organization. In addition to the financial implications of adding new holidays, we currently offer several paid holidays that are not recognized as official state holidays. Given the anticipated timeline for the approval of this rule, we will have less than two months to gather feedback from employees and establish a new holiday schedule for 2025.

Following this initial adjustment, we will face the daunting task of revising our payroll practices and scheduling policies to align with the new holiday schedule. The compressed timeline presents a substantial operational hurdle, as effective implementation will require careful coordination among various departments, including human resources and finance.

The Board's reluctance to consider a more realistic implementation date demonstrates a lack of understanding of provider operations and the complexities involved in executing significant changes within such a tight timeframe. To ensure a smooth transition and minimize disruption to our services, we respectfully urge the Board to reassess the implementation date, allowing sufficient time for facilities to prepare adequately. Without this consideration, the successful rollout of the new requirements may be severely compromised, ultimately affecting the quality of care we provide to our residents.

Thank you for your time and consideration.

Sincerely,

9/23/24

Matthew Fischer
Administrator
Bethany on the Lake
1020 Lark Street
Alexandria, MN 56308

From:	Autumn Herzog
To:	RULES, DLI (DLI)
Subject:	Proposed Rules ID # R-04870
Date:	Wednesday, September 4, 2024 11:57:17 AM
Attachments:	image001.jpg image002.jpg WFS Board Response from BVHC 00668.pdf

Please see attached comment letter regarding the Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 – 5200.2050, Revisor's ID Number R-04870. Thank you for you attention to this very important matter.

Thank you,

Autumn Herzog, LNHA

Administrator/Director of HR

114 Jefferson St. S.
Browns Valley, MN 56219
Phone: 320.695.2022 **Cell:** 701.371.8530 **Fax:** 320.695.2166
Website: www.bvhc.sfhs.org

Submitted Electronically
09/04/2024

Leah Solo, Executive Director
Nursing Home Workforce Standards Board
443 Lafayette Rd. N., St. Paul
MN 55155

Reference: Comment to Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 – 5200.2050, Revisor's ID Number R-04870

Dear Executive Director Solo,

Thank you for the opportunity to comment on the proposed holiday pay rule. I am writing to respectfully urge the Nursing Home Workforce Standards Board (the Board) to reconsider this mandate, as it poses significant challenges to nursing homes across Minnesota, especially as it remains an unfunded obligation.

To begin, Browns Valley Health Center has always supported the fair compensation of our employees, and we recognize the importance of a sustainable wage. However, it is the duty of our elected officials to ensure that any new financial burdens placed on healthcare providers, such as this holiday pay standard, are accompanied by proper funding. Nursing homes, which already face considerable financial pressures, cannot absorb these costs without support. Despite our advocacy for wage increases in the past legislative session through HF3391/SF4130, the proposed funding for employee compensation was not approved, leaving us in a dire position.

The holiday pay rule will require nursing homes to designate eleven holidays where employees must be paid time and a half. While the option to substitute four holidays with employee consent is allowed, the reality of implementing this in a short timeframe, with the rule likely only approved by November 2024 and effective January 1, 2025, creates immense logistical and financial strain. This rule was developed without fully considering its impact on nursing homes, particularly those already operating with thin margins in a labor market that continues to shrink.

Unfunded Mandate:
This rule represents a significant unfunded mandate. If nursing homes are required to implement time and a half pay for these holidays, there must be corresponding funding allocated. For example, in our facility, this would mean an additional $16,745 in holiday pay costs for 2025. Given the constraints we already face, these costs would force us to make difficult decisions about cutting back on other critical expenses—jeopardizing the quality of care we provide to our residents.

Financial Challenges:
Our facility, like many others in Minnesota, cannot simply adjust our rates to account for this increase in labor costs. Unlike businesses in other sectors, we are bound by Medicaid, Medicare, and private pay rates that are determined well in advance and do not account for new mandates. The Medicaid and CHIP Payment and Access Commission has reported that Medicaid only covers 86% of nursing home costs, leaving us at a financial disadvantage even before this new rule. Without state funding to support this increase, nursing homes may be forced to close their doors or reduce services, further limiting access to essential care for Minnesota's elderly population.

Operational and Implementation Challenges:
The timeline for implementation is highly problematic. Our organization would have less than two months to finalize a holiday schedule for 2025, requiring employee approval and major adjustments to payroll and scheduling. The Board's approach does not take into account the practical realities of running a nursing home. Additionally, we already offer holidays such as New Years Day, Easter, Memorial Day, Fourth of July, Labor Day, Thanksgiving, Christmas Eve and Christmas Day and adjusting these in accordance with the state holiday schedule will cause confusion and additional strain on our operations.

Impact on Care Access:
Ultimately, this rule places the financial burden on nursing homes without ensuring that our seniors will continue to receive the care they need. Many facilities, particularly those in rural areas like ours, are already struggling with staffing shortages and rising costs. Adding these holiday pay requirements without the necessary funding will put us in an impossible position, forcing us to make difficult choices that may include reducing services, limiting admissions, or in the worst-case scenario, closing our doors altogether.

I respectfully ask that the Board reconsider the holiday pay rule and work with the Legislature to secure adequate funding before imposing any new financial requirements on nursing homes. Without this support, the proposed rule will do more harm than good, particularly to the vulnerable populations we serve.

Thank you for considering my comments. I also request that a public hearing be held to further discuss this matter and its far-reaching consequences.

Sincerely,
Autumn Herzog, Administrator/Human Resources Director
Browns Valley Health Center

Becerra, Linnea (She/Her/Hers) (DLI)

From: Brandi Paulzine <bpaulzine@cannonrivers.com>
Sent: Wednesday, September 11, 2024 1:29 PM
To: RULES, DLI (DLI)
Subject: Comment
Attachments: NHWSB_CommentLetterHolidayCWOPostingRequirements (1).pdf

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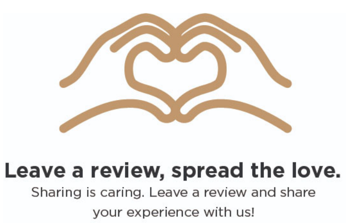
This message may be from an external email source.
Do not select links or open attachments unless verified. Report all suspicious emails to Minnesota IT Services Security Operations Center.

See the attached comment in writing.

Thank you,

CANNON RIVERS
A SENIOR LIVING COMMUNITY



Brandi Paulzine
Executive Director
P : 507.263.6062
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900 Main St. W
Cannon Falls, MN 55009
CannonRivers.com

Date: September 11, 2024

OAH Docket Number: 28-9001-40213

Presiding Judge: Administrative Law Judge Joseph Meyer

Comment Period: August 26, 2024 through 4:30 p.m. on September 25, 2024

Re: Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 - 5200.2050.

I am the Executive Director at Cannon Rivers Senior Living.

My community currently serves over 95 residents in rural Cannon Falls. Over the past 5 years my building has not been profitable and has undergone multiple management changes as a result. We aim to keep care affordable for those needing assisted living and memory care and work towards controlling expenses so the burden is not placed on seniors. Rising costs, we are mandated to do have made it increasingly difficult not to raise prices on seniors, and purposed rules such as the above deepen our bottom line. In our surrounding rural area, <u>multiple nursing homes and assisted livings have closed their doors</u> <u>displacing seniors and staff in the past year</u> and our building and my companies buildings do not want to close. We need you to hear us.

The proposed rule mandates that a nursing home employee who works any of the specified eleven holidays is paid a minimum of time-and-one-half their regular hourly wage for all hours worked during the holiday. I oppose the proposed rule language and request a public hearing.

- The mandated eleven state holidays are unfunded. Minnesota's Medicaid nursing facility payment system uses a facility submitted cost report. After auditing, the Minnesota Department of Human Services (DHS) January establishes Medicaid Rates on January 1 that reflect costs incurred 15 to 27 months prior.

- Nursing facilities engage in annual budgeting processes that begin a full year in advance. The mandated state holidays are an unanticipated change and are an unplanned expenditure.

- The January 1, 2025 effective date allows little time to implement the mandated eleven holidays. Nursing facilities are open 24 hours a day, seven days a week, 365 days a year. Planning and scheduling holidays requires detailed planning. Employees value certain holidays more than others. Employees also understand the inherent trade-offs of wanting to take Easter off will mean working on July 4. The proposed rule will become administrative law a month before the effective date.

- We also operate licensed an assisted living facility *(home health, hospice agencies, and hospitals)* on our campus. Assisted living staff may not work at a nursing facility but they are employees of our organization. The proposed rule will create either additional expenditure and/or administrative burden for our organization when implementing this Minnesota specific mandate.

- Our organization has nursing facilities in other states. The proposed rule will create either additional expenditure or administrative burden for our organization when implementing this Minnesota specific mandate.

- Our nursing facility currently contracts with vendors for (housekeeping, laundry, dietary etc.). It is not clear if these standards apply to the contracted employees, if our contracts need to be opened, or if this is interfering with our vendor contracts. We are concerned that the January 1, 2025 effective date and lack of funding will make this unworkable.

Thank you for your consideration.

Sincerely,

Brandi Paulzine, Executive Director
Cannon Rivers Senior Living

August 29, 2024

Leah Solo, Executive Director
Nursing Home Workforce Standards Board
443 Lafayette Rd. N., St. Paul
MN 55155

Reference: Comment to Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 – 5200.2050, Revisor's ID Number R-04870

Dear Executive Director Solo:

Thank you for the opportunity to comment on the proposed holiday pay proposed rule. I respectfully urge the Nursing Home Workforce Standards Board (the Board) to reconsider this misguided standard and rule.

To be clear, Cassia has supported our workers and their ability to earn a life-sustaining wage for many years. However, it is the responsibility and obligation of our state's elected officials to fund these investments. That is why nursing homes like ours have called for ongoing funding to raise wages. Specifically, during this past legislative session, HF3391/SF4130 would have provided funding to nursing homes for employee compensation via a rate increase, and at higher compensation levels than proposed by the Board. To my surprise and disappointment, this appropriation was not passed into law.

Absent leadership and support from the Legislative and Executive Branches, this proposed rule is an unfunded mandate that forces providers like Cassia to afford these paid holidays and their wage rates by deferring funding to other needs that are critical to providing quality care for the seniors we serve.

The Board needs to consider critical facts and impacts in the development of these standards and moving forward with the standards as proposed could recklessly put the access of essential nursing home care in jeopardy for communities all over Minnesota. First, Minnesota is and will continue to experience a decline in workers[1]. Additionally, the Board has not adequately considered the financial impacts to providers, including the limitations of state funding for nursing homes, such as a nearly 2-year delay in the recognition of new costs and the additional restrictions created by our rate equalization law. Most importantly, the Board's standard fails to promote access to quality care for Minnesota's seniors and is likely to decrease access to services available to our state's older adults.

[1] Minnesota State Demographer, 2016. https://mn.gov/admin/assets/demographic-considerations-planning-for-mn-leaders-msdc-march2016_tcm36-219453.pdf

7171 Ohms Lane | Edina, MN 55439 | 952-855-5000 | CassiaLife.org

I want to focus on my serious concerns about the proposed holiday pay standard. We need a more global approach from the Minnesota legislators to bring about change that is supported by correlated funding. When decisions like this one get made without full vision of the impact, it is very detrimental to the skilled nursing facilities' long-term financial stability and viability. We need to work together to help our legislators understand the outcome of this decision.

As a financial person serving in the Minnesota senior health care sector for over 34 years, I have seen many good years and especially in the past few years many challenging years both financially and in other ways. Please help us to keep our financial support strong, so we can both attract new workers and keep our current workers paid well along with supportive benefits like more holidays. We agree that we need to provide more time off when we are able to do so

Financial challenges

In a time of record wage inflation and market competition for workers, we cannot compete with retail, food service, or other industries, particularly given the unique role that our state and federal government partners have in supporting wages through Medicare and Medicaid. The Board is asking nursing homes to do a financially detrimental thing – pay staff more without any additional funding.

The Medicaid and CHIP Payment and Access Commission has reported that current basic Medicaid rates only cover 86% of nursing home costs.[2] We must ensure nursing homes are reimbursed for the true cost of the care they provide.

The Minnesota reimbursement statutes for nursing facilities include these financially challenging attributes:

- Our nursing facility's Medicaid and Private Pay Rates are determined with allowable costs incurred between 15 to 27 months prior. Because of the auditing process, it is impossible for a nursing facility to know what their rates will be until the Minnesota Department of Human Services calculates 45-days prior to January 1 of each year.
- Most of our 12 nursing facilities are part of a campus with other services and living arrangements. We believe that we need to be consistent with our non-nursing facility workers and grant the same holiday policy as the skilled nursing facilities' workers. The costs associated with the holiday pay rule are not limited to nursing facilities in these situations.
- With the equalization of Medicaid and private pay rates, the state funded managed care programs for seniors (MSC + and MSHO), and Medicare, nearly all of our funding and rates are controlled by the state and federal governments. Unlike other businesses, we are unable to raise our prices to meet new expenses.

[2] Medicaid and CHIP Payment and Access Commission, (2023, January). Estimates of Medicaid Nursing Facility Payments Relative to Costs. https://www.macpac.gov/wp-content/uploads/2023/01/Estimates-of-Medicaid-Nursing-Facility-Payments-Relative-to-Costs-1-6-23.pdf

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cassia

Implementation challenges

The effective date of January 1, 2025, for this rule is very problematic for our organization. In addition to the cost of adding new holidays, we currently offer some paid holidays that are not official state holidays. Based on the expected timeline for approval of this rule, we will have less than two months to receive feedback from employees and implement a new holiday schedule for 2025. Once that is done, we will have to adjust payroll practices and scheduling policies to implement the new holiday schedule. The Board's unwillingness to consider a more realistic implementation date show that they do not understand provider operations and the challenges they face in implementing major changes in an unrealistic time frame.

In summary, this proposed standard requires nursing homes to pay holiday wages that are not currently part of reimbursement rates, meaning in simple terms it is an unfunded mandate. We would like more flexibility to choose the specific holidays that incorporate our religious traditions and values, assuming that there will be correlated funding for the increased holidays paid at time and a half. The potential impacts of the additional holidays without financial support will be directly felt by residents, their families, and communities as a result. Please allow us to share our thoughts at a public hearing.

Thank you for your consideration.

Sincerely,

Kathy L Youngquist

Kathy Youngquist
Chief Financial Officer of Cassia

September 24, 2024

Leah Solo
Executive Director
Nursing Home Workforce Standards Board

Re: Comment to Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 – 5200.2050, Revisor's ID Number R-04870

Dear Executive Director Solo,

On behalf of Courage Kenny Rehabilitation Institute, part of Allina Health, I am writing to express concern over the proposed rules relating to holiday pay for nursing home workers. The proposed rules fail to address significant gaps in funding, time, and resources that providers will need to implement the changes effectively.

Allina Health is a fully integrated health system with 11 hospital campuses, 65 primary care clinics, and 14 urgent care centers across the Twin Cities, central and southern Minnesota and western Wisconsin. We are proud to offer a wide range of inpatient and outpatient rehabilitation and community services through the Courage Kenny Rehabilitation Institute (CKRI). With locations throughout the Twin Cities and western Wisconsin, CKRI's expert rehabilitation teams provide care to children and adults with injuries and disabilities of all kinds. This includes operating our Transitional Rehabilitation Program (TRP), which is a high-intensity, inpatient rehabilitation facility. This nationally recognized 48-bed skilled nursing facility is staffed by our interdisciplinary team of care providers.

CKRI, along with providers throughout the continuum, are facing significant financial headwinds that threaten the ability of providers to maintain services that patients rely on. Low public reimbursement rates, prior authorization requirements, and regulatory barriers are stretching providers' resources to the breaking point. As an unfunded mandate, the holiday pay proposed rules would only exacerbate these challenges. By establishing mandated holidays that exceed current collective bargaining agreements and industry standards, all of which are paid at an increased rate, the Board is asking providers to increase labor expenses with no funding increases to match. Additionally, asking providers to pay for all expenses for training related to the rules without allowing for oversight or input into the training presents an additional risk financially and operationally. Allowing providers to become licensed to deliver these trainings would be a meaningful improvement.

It is concerning the board believes it is an effective strategy to issue the final rule less than two months before the implementation date. This decision creates significant operational challenges for our organization. Based on the expected timeline for approval of this rule, we will have less than two months to receive feedback from employees and implement a new holiday schedule for 2025. Once that is done, we will have to adjust payroll practices and scheduling policies to implement the new holiday schedule. Additionally, there are concerns about the interactions and potential contradictions with existing collective bargaining agreements. We urge the Board to consider extending implementation timelines and to refrain from adopting any significant changes to the underlying statute.

Thank you for considering these comments, and we look forward to continuing work with the Board and all stakeholders on these critical issues.

Sincerely,

Brian LeLoup
Director, Post Acute Rehabilitation and Community Services
Courage Kenny Rehabilitation Institute, part of Allina Health

From: Danielson, Dalton
To: RULES, DLI (DLI)
Subject: CKRI Comments on Proposed Rules
Date: Wednesday, September 25, 2024 4:35:43 PM
Attachments: CKRI_NHWSB Letter.pdf

Good afternoon,

Please see attached for Allina Health and CKRI's comments on the proposed regulations on holiday pay for nursing home staff. If you have any questions, please reach out.

Thanks,

Dalton Danielson
Senior Public Affairs Specialist • Allina Health
Phone: 763-478-1272 • Dalton.Danielson@Allina.com
Mail Route 10807 • PO Box 43 • Minneapolis, MN 55440

From:	Justin Boldt
To:	RULES, DLI (DLI)
Subject:	NHWSB - OAH Docket Number: 28-9001-40213
Date:	Monday, September 23, 2024 1:57:03 PM
Attachments:	Outlook-dcxtoa4e.png NHWSB Ecumen North Branch.pdf

Hello,

Please see attached letter on the Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 - 5200.2050.

Thank You,

Justin Boldt, LNHA, LALD
Executive Director
w. 651-237-3006 | c. 651-421-1975 | justinboldt@ecumen.org

Ecumen North Branch | 5379 383rd Street, North Branch, MN 55056
ecumennorthbranch.org | Facebook | 651-237-3000
An Ecumen Living Space | Careers | Give | Facebook | Twitter | LinkedIn

Date: September 23, 2024

OAH Docket Number: 28-9001-40213

Presiding Judge: Administrative Law Judge Joseph Meyer

Comment Period: August 26, 2024 through 4:30 p.m. on September 25, 2024

Re: Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 - 5200.2050.

I am the Executive Director at Ecumen North Branch.

Ecumen North Branch serves 67 residents with Skilled Nursing Facility needs. 50 Assisted Living Residents and 20 Memory Care residents. The facility has a high demand for services from the community but due to the staffing shortages and the increased labor costs the facility is struggling to make ends meet.

The proposed rule mandates that a nursing home employee who works any of the specified eleven holidays is paid a minimum of time-and-one-half their regular hourly wage for all hours worked during the holiday. I oppose the proposed rule language and request a public hearing.

- The mandated eleven state holidays are unfunded. Minnesota's Medicaid nursing facility payment system uses a facility submitted cost report. After auditing, the Minnesota Department of Human Services (DHS) January establishes Medicaid Rates on January 1 that reflect costs incurred 15 to 27 months prior.
  This reimbursement system doesn't factor inflation, so facilities are always operating on a negative budget. Huge increases to a single fiscal year are enough to close facilities as the cash to continue operations won't start to be recouped until 15 months later.

- Nursing facilities engage in annual budgeting processes that begin a full year in advance. The mandated state holidays are an unanticipated change and are an unplanned expenditure.
  This mandated expense will add an estimated $53,574 to the facilities bottom line.

- The January 1, 2025 effective date allows little time to implement the mandated eleven holidays. Nursing facilities are open 24 hours a day, seven days a week, 365 days a year. Planning and scheduling holidays requires detailed planning. Employees value certain holidays more than others. Employees also understand the inherent trade-offs of wanting to take Easter off will mean working on July 4. The proposed rule will become administrative law a month before the effective date.
  Provide Additional Facility Context

- We also operate licensed an assisted living facility *(home health, hospice agencies, and hospitals)* on our campus. Assisted living staff may not work at a nursing facility but they are employees of our organization. The proposed rule will create either additional expenditure and/or administrative burden for our organization when implementing this Minnesota specific mandate.

- Staff don't understand why employees under one license in an organization get benefits that other employees under a different license do not get. This creates inequity in the organization and leads to unneeded animosity between team members.
- Our organization has nursing facilities in other states. The proposed rule will create either additional expenditure or administrative burden for our organization when implementing this Minnesota specific mandate.

- Our nursing facility currently contracts with vendors for (housekeeping, laundry, dietary etc.). It is not clear if these standards apply to the contracted employees, if our contracts need to be opened, or if this is interfering with our vendor contracts. We are concerned that the January 1, 2025 effective date and lack of funding will make this unworkable.

Thank you for your consideration.

Sincerely,
Justin Boldt, LNHA, LALD
Executive Director
Ecumen North Branch

From:	Rachael Evers
To:	RULES, DLI (DLI)
Subject:	Comments on mandated holiday pay
Date:	Tuesday, September 24, 2024 8:08:10 AM
Attachments:	Outlook-f3jp3wsk.jpg NHWSB Sept letter 2024.docx

Please see attachment. Thank you!

Rachael Evers
Executive Director | Operations
w. 507-385-4347 | c. 507-594-0226 | rachaelevers@ecumen.org

Ecumen Pathstone | 718 Mound Ave, Mankato, MN 56001
ecumenpathstone.org | Facebook | 507-345-4576
An Ecumen Living Space | Careers | Give | Facebook | Twitter | LinkedIn

Date:	September 26, 2024
OAH Docket Number:	28-9001-40213
Presiding Judge:	Administrative Law Judge Joseph Meyer
Comment Period:	August 26, 2024 through 4:30 p.m. on September 25, 2024

Re: Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 - 5200.2050.

I am the Executive Director at Ecumen Pathstone, in Mankato MN.

Ecumen Pathstone is a 69 licensed skilled nursing facility in Mankato, MN. Ecumen Pathstone is well known in the Mankato community due to its exceptional rehabilitation unit. Of the 69 beds, roughly half of them are for long term care residents and the other half are for short term rehab stays. Ecumen Pathstone consists of a continuum of care campus which includes, assisted living, memory care, adult day services, home care, hospice, independent living and skill nursing. Ecumen Pathstone employs around 400 team members and serves roughly 245 seniors across our service lines.

The proposed rule mandates that a nursing home employee who works any of the specified eleven holidays is paid a minimum of time-and-one-half their regular hourly wage for all hours worked during the holiday. I oppose the proposed rule language and request a public hearing.

- The mandated eleven state holidays are unfunded. Minnesota's Medicaid nursing facility payment system uses a facility submitted cost report. After auditing, the Minnesota Department of Human Services (DHS) January establishes Medicaid Rates on January 1 that reflect costs incurred 15 to 27 months prior.

- Nursing facilities engage in annual budgeting processes that begin a full year in advance. The mandated state holidays are an unanticipated change and are an unplanned expenditure. If Ecumen Pathstone implemented the proposed holidays across our SNF and Assisted living it would cost roughly $35,525 and if it was solely in the SNF it would cost roughly $18,587.

- The January 1, 2025 effective date allows little time to implement the mandated eleven holidays. Nursing facilities are open 24 hours a day, seven days a week, 365 days a year. Planning and scheduling holidays requires detailed planning. Employees value certain holidays more than others. Employees also understand the inherent trade-offs of wanting to take Easter off will mean working on July 4. The proposed rule will become administrative law a month before the effective date.

- We also operate licensed an assisted living facility *(home health, hospice agencies, and hospitals)* on our campus. Assisted living staff may not work at a nursing facility but they are employees of our organization. The proposed rule will create either additional expenditure and/or administrative burden for our organization when implementing this Minnesota specific mandate.
- If we do not apply the same holiday pay or rules across our campus, we run into the concern of team members moving to which service line that has the better benefits. With the staffing challenges that are already present in our industry, we do not want to be competing for staff within our own organization across the different service lines.

Thank you for your consideration.

Sincerely,

Rachael Evers
Executive Director
Ecumen Pathstone

EVENTIDE
Senior Living Communities

801 Main Avenue, Suite 201
Moorhead, MN 56560
218-291-2230 | fax: 218-477-3250

September 27, 2024

Leah Solo, Executive Director
Nursing Home Workforce Standards Board
443 Lafayette Rd. N., St. Paul
MN 55155

Reference: Comment to Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 – 5200.2050, Revisor's ID Number R-04870

Dear Executive Director Solo:

Thank you for the opportunity to comment on the proposed holiday pay proposed rule. I respectfully urge the Nursing Home Workforce Standards Board (the Board) to reconsider this misguided standard and rule.

My name is Emily Kollar and I am the Executive Director at Eventide in Moorhead, Minnesota. I have been in my role for four years and with Eventide for five years. I love the work my team and I do that contributes to great care for our residents here in their homes at Eventide. I work in long-term care because I am passionate about not only providing great care, but also providing a great home and sense of community for our residents, staff, and guests.

Eventide is a faith-based, non-profit senior healthcare organization based in Moorhead, Minnesota. We provide a full range of lifestyle and service options, including independent and assisted living, memory care, skilled nursing care and transitional care. With over 1,100 employees, Eventide serves over 1,200 residents daily at our locations in Moorhead, MN, Fargo, West Fargo, Jamestown and Devils Lake, ND.

To be clear, Eventide has always supported our workers and their ability to earn a life-sustaining wage. However: it is the responsibility and obligation of our state's elected officials to fund these investments. That is why nursing homes like mine have called for funding to raise wages year after year. Specifically, during this past legislative session, HF3391/SF4130 would have provided funding to nursing homes for employee compensation via a rate increase, and at higher compensation levels than proposed by the Board. To my surprise and disappointment, this appropriation was not passed into law.

Absent leadership and support from the Legislative and Executive Branches, this proposed rule is an unfunded mandate that forces providers like me to afford these paid holidays and their wage rates by deferring funding to other needs that are critical to providing quality care for the seniors we serve.

The Board fails to consider, or worse ignores, critical facts and impacts in the development of these standards and moving forward with the standards as proposed could recklessly put the access of essential nursing home

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care in jeopardy for communities all over Minnesota. First, Minnesota is and will continue to experience a decline in workers[1]. Additionally, the Board has completely ignored the financial impacts to providers, including the limitations of state funding for nursing homes, such as a nearly 2-year delay in the recognition of new costs and the additional restrictions created by our rate equalization law.

Most disappointingly and critically, the Board's standard fails to guarantee access to quality care for Minnesota's seniors and is likely to decrease access to services available to our state's older adults.

I want to focus on my serious concerns about the proposed holiday pay standard on the fact that it's an unfunded mandate and the financial challenges this could present, as well as the implementation challenges this creates.

Unfunded mandate

The statute establishing this Board and the creation of standards also made clear that new standards should be funded with adequate funding before becoming effective. If the Board is going to require providers to pay time and a half for additional holidays, then lawmakers must take steps to fund the increased wage costs upfront and before the standard can take effect. Nursing homes cannot shoulder the burden these standards alone, especially when the state and federal governments are responsible for providing the funds to them. In the case of our facility, we will need to add four holidays in 2025 at an estimated new cost of $150,000.

Financial challenges

In a time of record wage inflation and market competition for workers, we cannot compete with retail, food service, or other industries, particularly given the unique role that our state and federal government partners have in supporting wages through Medicare and Medicaid. **The Board is asking nursing homes to do the impossible – pay staff more without any additional funding.**

The Medicaid and CHIP Payment and Access Commission has reported that current basic Medicaid rates only cover 86% of nursing home costs.[2] We must ensure nursing homes are reimbursed for the true cost of the care they provide.

Implementation challenges

The effective date of January 1, 2025, for this rule is very problematic for our organization. In addition to the cost of adding new holidays, we currently offer some paid holidays that are not official state holidays. Based on the expected timeline for approval of this rule, we will have less than two months to receive feedback from employees and implement a new holiday schedule for 2025. Once that is done, we will have to adjust payroll practices and scheduling policies to implement the new holiday schedule. The Board's unwillingness to

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[1] Minnesota State Demographer, 2016. https://mn.gov/admin/assets/demographic-considerations-planning-for-mn-leaders-msdc-march2016_tcm36-219453.pdf

[2] Medicaid and CHIP Payment and Access Commission, (2023, January). Estimates of Medicaid Nursing Facility Payments Relative to Costs. https://www.macpac.gov/wp-content/uploads/2023/01/Estimates-of-Medicaid-Nursing-Facility-Payments-Relative-to-Costs-1-6-23.pdf

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consider a more realistic implementation date show that they do not understand provider operations and the challenges they face in implementing major changes in an unrealistic time frame.

In order to provide a true benefit to our employee's, we should consider their feedback in what additional four holidays would be the most beneficial for them, but this effective date leaves us no room to actually implement this in the correct way, to ultimately meet the intention of this rule.

Eventide also has a very flexible holiday plan for our employees. Currently, Part Time and PRN (as needed) employees already receive time and a half on the holidays. However, our Full-Time employees have their holiday hours put into their regular PTO hours to provide them DOUBLE pay on the holiday as they can take the PTO even if they are scheduled to work, plus an additional $1/hour. The implementation of this rule will actually be a loss for our full-time employees as it would limit the use of the holiday hours, creating a separate bank that "locks" them in to only using those hours when they don't work on a holiday. We also do not require our full time employees to use their Holiday PTO if they work they holiday; it's optional for them to receive the double pay and they could choose to keep those PTO hours in their bank and use it on another day that better suits them and their personal beliefs or life.

We also operate in more than just the state of Minnesota, with locations just a few miles away across a state border. These forced rules and the financial challenges they present, would prevent us from having consistent practices amongst our locations that are in the same geographic footprint. Ultimately, causing staff frustration and concern.

In summary, this proposed standard requires nursing homes to pay holiday wages that are not currently part of reimbursement rates, meaning in simple terms it is an unfunded mandate. Tying the hands of providers by forcing employees to accept specific holidays will not achieve its intended impact. Such impacts will be directly felt by residents, their families, and communities as a result. Accordingly, we are opposed to this entire rule and request its disposition be resolved during a public hearing.

Thank you for considering my comments and request for public hearing.

Sincerely,

[Insert your name and title]

From: Sandy Larson
To: RULES, DLI (DLI)
Cc: Sandy Larson; Mark Schulz
Subject: Minnesota Rules, Part 5200.2000 – 5200.2050, Revisor’s ID Number R-04870
Date: Sunday, September 22, 2024 1:27:26 PM
Attachments: image001.png
FM Proposed Holiday Pay.doc

RE: Revisor’s ID Number R-04870,

Thank you for allowing an opportunity to submit comments on the proposed holiday rule, Revisor’s ID Number R-04870.

Respectfully,

Sandy Larson

Sandra Larson, NHA | *Interim Administrator*
Fair Meadow Nursing Home & Assisted Living
300 Garfield Ave SE
Fertile, MN 56540
(218) 945-6194

Fair Meadow Nursing Home

300 Garfield Ave SE
Fertile, MN 556540

September 22, 2024

Leah Solo, Executive Director
Nursing Home Workforce Standards Board
443 Lafayette Rd. N., St. Paul
MN 55155

Reference: Comment to Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 – 5200.2050, Revisor's ID Number R-04870

Dear Executive Director Solo:

Fair Meadow Nursing Home and Assisted Living has always supported our workers and their ability to earn a life-sustaining wage, I appreciate the opportunity to comment on the proposed holiday pay rule.

I respectfully urge the Nursing Home Workforce Standards Board to reconsider the proposed holiday pay standard and rule.

Nursing homes have called for funding to raise wages year after year. It is the responsibility and obligation of our state's elected officials to fund these investments. HF3391/SF4130 would have provided funding for nursing homes to compensation employees via a rate increase at higher compensation levels than proposed by the Board. The appropriation was not passed into law.

This proposed rule is an unfunded mandate that forces providers to afford these paid holidays and their wage rates by deferring funding for other needs critical to providing quality care for the seniors we serve.

Has the Board failed to consider, or worse ignored, the critical facts and impacts the development of and moving forward with the standards as proposed could recklessly put the access of essential nursing home care in jeopardy for Minnesota communities.

Minnesota continues to experience a decline in workers. The financial impacts to providers have been completely ignored, including the limitations of state funding for nursing homes, the delay in the recognition of new costs, and the added restrictions created by our rate equalization law. The Board's standard does not guarantee access to quality care for Minnesota's seniors and is likely to decrease access to services available to our state's older adults.

If the Board is going to require providers to pay time and a half for added holidays, then lawmakers must take steps to fund the increased wage costs upfront before the standard can take effect. The Board is asking nursing homes to do the impossible – pay staff more without any added funding. Nursing homes cannot shoulder the burden of these standards alone,

In a time of record wage inflation and market competition for workers, we cannot compete with other industries given the unique role that our state and federal government partners have in supporting wages through Medicare and Medicaid.

Phone (218) 945-6194 Fax (218) 945-6459

Fair Meadow Nursing Home and Assisted Living is owned by the city, this new expense from changes to the required paid holidays will require the use of public tax funds if our facility is expected to comply.

The effective date of January 1, 2025, for Nursing Home Workforce Standards rule is problematic for Fair Meadow considering the additional cost of adding new holidays to our currently paid holidays, the limited time to receive employees feedback and implement a new holiday schedule for 2025, the adjustments payroll practices and scheduling policies. The unwillingness to consider a more realistic approach and implementation lacks understanding of provider operations and challenges faced in implementing major changes in an unrealistic time frame. A mandated rule published so late in the year is difficult to comply with.

In summary, this proposed standard requires nursing homes to pay holiday wages that are not currently part of reimbursement rates is an unfunded mandate. Tying the hands of providers by increasing the number of holidays will not achieve its intended impact. An impact that will be directly felt by our residents, their families, and our community as a result. Fair Meadow Nursing Home and Assisted Living is opposed to this entire rule.

Thank you for considering my comments.

Respectfully,

Sandy Larson

Sandra Larson, administrator
Fair Meadow Nursing Home
300 Garfield Ave SE
Fertile, MN 56540

From: Brinkman-Schill, MaryJo
To: RULES, DLI (DLI); Afsharjavan, Ali (DLI)
Cc: Castle, Robert C.
Subject: Written Comment submitted on behalf of the Long-Term Care Imperative (LeadingAge Minnesota and Care Providers of Minnesota) re: Proposed MN Rules 5200.2000-5200.2050
Date: Tuesday, September 24, 2024 3:40:44 PM
Attachments: LTCI Comment to NHWSB - 2024.9.24-C.pdf

Please see the attached written comment letter regarding Proposed Expedited Permanent Rules Modifying Certification Criteria, Notice Posting Requirements, and Holiday Pay Rules for Nursing Home Workers (Proposed Minnesota Rules 5200.2000-5200.2050): Written Comment Submitted on Behalf of the Long-Term Care Imperative (LeadingAge Minnesota and Care Providers of Minnesota).

Sincerely,

MaryJo

SENT ON BEHALF OF ROBERT C. CASTLE
612-607-7577; 612-518-2104
rcastle@foxrothschild.com

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ROBERT C. CASTLE
Direct No: 612.607.7577
Email: rcastle@foxrothschild.com

September 24, 2024

VIA EMAIL–dli.rules@state.mn.us

Leah Solo
Department of Labor and Industry
Nursing Home Workforce Standards Board
443 Lafayette Rd. N.
St. Paul, MN 55155

VIA EMAIL-ali.afsharjavan@state.mn.us

Ali Afsharjavan
General Counsel
Minnesota Department of Labor and Industry
443 Lafayette Rd. N.
St. Paul, MN 55155

Re: Proposed Expedited Permanent Rules Modifying Certification Criteria, Notice Posting Requirements, And Holiday Pay Rules for Nursing Home Workers (Proposed Minnesota Rules 5200.2000–5200.2050): Written Comment Submitted on Behalf of the Long-Term Care Imperative (LeadingAge Minnesota and Care Providers of Minnesota)

Dear Nursing Home Workforce Standards Board and Mr. Afsharjavan:

I. INTRODUCTION:

Fox Rothschild LLP advises and represents LeadingAge Minnesota ("LeadingAge") and Care Providers of Minnesota ("Care Providers") with respect to the following objections to the Proposed Rules, as defined below. Pursuant to Minnesota Statute § 14.389, subd. 2, and on behalf of the Long-Term Care Imperative ("Imperative") we submit this written comment ("Comment") in response to the Nursing Home Workforce Standards Board's ("NHWSB") Proposed Expedited Permanent Rules Modifying Certification Criteria, Notice Posting Requirements, And Holiday Pay Rules For Nursing Home Workers, proposed Minnesota Rules 5200.2000–5200.2050 (the "Proposed Rules"). For the reasons discussed herein, the Imperative urges the NHWSB to withdraw the Proposed Rules.

The Imperative's most salient objections to the Proposed Rules may be summarized as follows:

A. Certain provisions of the Proposed Rules are preempted by the National Labor Relations Act (NLRA), under the Supremacy Clause of the United States Constitution.

B. The Proposed Rules violate the rights of nursing home employers under the NLRA.

C. The Proposed Rules will result in many unionized nursing home employers being obligated to provide paid holidays in violation of the terms of and their obligations under longstanding collective bargaining agreements ("CBAs") with unions. Those CBAs neither anticipate nor require that those employers which have entered into those CBAs provide their employees with eleven paid holidays per year.

D. The Proposed Rules require nursing home employers to allow employees to vote on paid holidays through procedures which are not provided for by, and which will at least arguably violate employee and employer rights under the NLRA.

E. The Proposed Rules require virtually all nursing home employees, including "exempt" and "non-exempt" employees as defined by the Fair Labor Standards Act, ("FLSA")[1] to be paid a minimum of "time-and-one-half" of their regular hourly wage, despite the fact that "exempt" nursing home employees are not paid by the hour, nor do such employees track their hours worked for overtime. Proposed Rule 5200.2010 subpart 1. Furthermore, nursing home employers generally do not track "exempt" employees' hours worked for the purpose of calculating overtime, because "exempt" employees are not entitled to overtime.

This Comment reflects the Imperative's most salient objections to the Proposed Rules from a labor and employment law perspective. The Imperative reserves the right to supplement the objections reflected in this Comment during future rulemaking procedures, and/or in any litigation challenging the adoption and/or enforcement of the Proposed Rules as currently proposed, or as modified in response to this Comment.

II. BRIEF FACTUAL AND LEGAL CONTEXT FOR THIS COMMENT:

Minnesota "private sector" nursing homes are governed by various statutes, including the National Labor Relations Act, 29 U.S.C. § 141, *et. seq*. and the Fair Labor Standards Act, 29 U.S.C. § 201, *et. seq*. The NLRA protects the rights of covered "employees" to be represented by unions, and for the unions which represent such employees to engage in collective bargaining with the nursing home employers which employ the employees those unions represent. Those negotiations which are conducted in compliance with the NLRA, as supervised and enforced by the National Labor Relations Board, generally result in collective bargaining agreements ("CBAs") which define the terms and conditions of the union represented employees covered by those agreements. In the experience of the Imperative, CBAs between nursing home employers and the unions which represent their employees virtually always provide that eligible employees receive holiday pay under various circumstances. The number of paid holidays, the premium for working a holiday,

[1] The Proposed Rules do not address the distinction between "exempt" and "non-exempt" employees as defined by the FLSA.

etc., are determined by the parties through the collective bargaining process as conducted pursuant to and in compliance with the NLRA. Some employers and unions may prefer to allocate employer funds to pay for more holidays, other employers and unions may agree to fewer paid holidays so that employers may use available funds to pay for other employee benefits. Ultimately, the CBAs' provisions regarding paid holidays reflects the outcome of the collective bargaining process, free of government interference or mandate. An example of a CBA provision regarding paid holidays is attached as Exhibit A.

Furthermore, the typical nursing home employs employees in a range of classifications. Certain employees are classified as "exempt" under the FLSA. Those employees typically do not have hourly rates but rather are paid salaries to perform their "exempt employee" duties. While most employers offer such "exempt" employees certain paid holidays, exempt employees are not typically paid enhanced amounts if their duties require that they work on a holiday, whether defined by their employer's benefit program, or otherwise.

Finally, the NLRA requires that employers with union represented work forces must bargain exclusively with their union representatives. Union represented employees are commonly referred to as "bargaining unit" employees. While unions and nursing home employers must bargain with those unions which represent their employees, such employers have no legal obligation to, nor do they bargain with their employes outside their bargaining units. Nevertheless, the provisions of the Proposed Rules ill-advisedly aggregate supervisory and non-supervisory employees for the purpose of voting on which holidays they wish to have paid.

In short, the Proposed Rules entirely ignore the reality of nursing home staffing, hierarchy of employees, rights of employees and nursing home employers, and the compensation and benefits practices of those employers. Those Rules also violate critical federal statutes and related principles and employer rights.

III. SUPPORT FOR THIS COMMENT'S OBJECTIONS TO THE PROPOSED RULES:

A. Certain Provisions of the Proposed Rules are Preempted by the National Labor Relations Act.

Under the Supremacy Clause of the U.S. Constitution, the National Labor Relations Act (NLRA) preempts inconsistent state law.[2] The NLRA broadly preempts labor-related state and local regulations such as the Proposed Rule. The Supreme Court has consistently recognized two forms

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[2] "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const., art. IV, cl. 2.

of preemption under the NLRA, both of which apply to the Proposed Rules as drafted. "*Garmon*" preemption "forbids state and local regulation of activities that are 'protected by § 7 of the [NLRA], or constitute an unfair labor practice under § 8." *Bldg. & Const. Trades Council of Metro. Dist. v. Associated Builders & Contractors of Massachusetts/Rhode Island, Inc.*, 507 U.S. 218, 225–226 (1993) (quoting *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 244 (1959)). As to the second form of preemption, "*Machinists*" preemption, "protects the collective bargaining process itself from interference." *Thunderbird Mining Co. v. Ventura*, 138 F. Supp. 2d 1193, 1196 (D. Minn. 2001) (citing *Lodge 76, Int'l Ass'n of Machinists & Aerospace Workers, AFL-CIO v. Wisconsin Emp. Rels. Comm'n*, 427 U.S. 132 (1976)). Both forms of preemption apply here.

Section 5200.2000 subpart 4 of the Proposed Rules mandate the number of paid holidays which employers, including those with union represented employees covered by CBAs, must provide their union represented employees. That mandate will result in nursing homes being forced to provide more paid holidays in violation of CBAs which provide for fewer paid holidays, and are the result of labor negotiations which nursing home employers have engaged in as required by and in compliance with the NLRA. The Proposed Rules, which establish a minimum number of paid holidays for employees, including those covered by CBAs negotiated under the NLRA, are preempted by *Garmon*. The "bargaining freedom" guaranteed by the NLRA "means both that parties need not make any concessions as a result of Government compulsion and that they are free from having contract provisions imposed upon them against their will." *United Steelworkers of Am., AFL-CIO-CLC v. St. Gabriel's Hosp.*, 871 F. Supp. 335, 341 (D. Minn. 1994) (quoting *N.L.R.B. v. Burns Int'l Sec. Servs., Inc.*, 406 U.S. 272, 287 (1972)). "The doctrine is premised on Congress's overriding interest in uniform, national application of the NLRA, rather than on protecting particular conduct of private bargaining parties." *Thunderbird*, 138 F. Supp. at 1196. The terms of employment respecting paid holidays are central to collective bargaining agreements and to the NLRA. Nothing "deeply rooted in local feeling" permits direct state regulation of the collective bargaining process to provide these market-altering rights to nursing home workers. *See Cannon v. Edgar*, 33 F.3d 880, 885 (7th Cir. 1994). The Proposed Rules are therefore an "impermissible intrusion by the State of Minnesota into the collective bargaining process" and are preempted by *Garmon*. *See United Steelworkers*, 871 F. Supp. at 341.

Similarly, the Proposed Rules are barred by *Machinists* preemption, which "can be described as a form of conflict preemption under which state regulation of the bargaining conduct of private parties is displaced because it conflicts with the purpose of Congress in enacting the NLRA to leave that conduct 'to be controlled by the free play of economic forces." *Thunderbird*, 138 F. Supp. 2d at 1196 (quoting *St. Thomas -- St. John Hotel & Tourism Ass'n Inc. v. Gov't of U.S. Virgin Islands*, 218 F.3d 232, 239 (3d Cir. 2000)). Any state law "which influences either the economic weapons available to the bargaining parties or the outcome of the negotiations is preempted." *Thunderbird*, 138 F. Supp. 2d at 1197. The Proposed Rules would alter both the "economic weapons" available to negotiating parties as well as the "outcome of the negotiations" by mandating the number of paid holidays *Id.* at 1197. The Proposed Rules additionally violate principles of *Machinists* preemption by forcing employers into negotiations with workers or their unions should they wish to make changes to the start and stop times for the 24-hour periods comprising holidays or seek changes to the government-mandated schedule of selected holidays. Proposed Rules 5200.2020 Subp. 2 (A)-(B). In essence, in devising the NLRA, Congress chose to regulate some aspects of labor activities and to leave others 'unrestricted by *any* government power to regulate'" *United Steelworkers*, 871 F. Supp. at 340 (quoting *NLRB v. Ins. Agents*, 361 U.S. 477, 488 (1960) (emphasis added)). The Proposed Rules cannot be adopted in light of the preemptive effect of the NLRA.

B. The Proposed Rules Impose Terms of Employment Upon Nursing Home Employers which will Violate their Labor Agreements with Unions.

The Proposed Rules' mandate with respect to a minimum number of paid holidays violates the NLRA because it disregards how nursing home employers and the unions which represent their employees have already determined, through the collective bargaining process (which is governed and protected by the NLRA) how to best provide benefits for union represented employees. For example, nursing homes regularly negotiate with unions regarding wages, employer contributions towards the cost of various types of insurance, funding of retirement plans and paid vacation or paid time off ("PTO"). Through the collective bargaining process, as governed by the NLRA, unions and employees regularly negotiate about the allocation of employer funds to pay for the foregoing benefits. Some employers, and the unions which represent their employees, may prefer, for example, that employers direct more funding toward the cost of health insurance, as opposed to providing employees with more paid holidays. The terms of the labor agreements which employers enter into with unions reflect the outcome of employers' and unions' collective bargaining. The Proposed Rules disregard the outcomes of the collective bargaining process, and instead mandate a minimum number of paid holidays, in violation of existing labor agreements.

Furthermore, Section 5200.2010 provides that the holiday pay obligation shall become effective on January 1, 2025 ("Effective Date"). That Effective Date entirely ignores the fact that nursing home employers' CBAs frequently do not expire on December 31, but instead may remain in effect well into the following year or years. The Proposed Rules' arbitrary selection of a January 1, 2025 Effective Date would require nursing home employers to unilaterally, in violation of the NLRA, to increase paid holidays during the life of a CBA. Nursing homes without union represented employees would also be adversely impacted to the extent that the cost of the mandated holidays is inconsistent with their plans regarding employee benefits, related costs, etc.

C. The Proposed Rules Disregard Market Conditions as Reflected in Existing Collective Bargaining Agreements.

The enabling act of the NHWSB requires that it "must investigate market conditions and the existing wages, benefits, and working conditions of nursing home occupations." Minn. Stat. § 181.213 subd. 2. Specific information the NHWSB must consider includes: "wage rate and benefit data collected by or submitted to the board for nursing home workers in the relevant geographic area and nursing home occupations," "statements showing wage rates and benefits paid to nursing home workers in the relevant geographic area and nursing home occupations," and "signed collective bargaining agreements applicable to nursing home workers in the relevant geographic area and nursing home occupations." Minn. Stat. § 181.213 subd. 2 (b)(1)-(3).

The Proposed Rules require employers to provide increased holiday pay for eleven specific 24-hour periods throughout each year. Proposed Rules 5200.2010. The Imperative has received information from nursing home facilities regarding market conditions and benefits provided to nursing home workers in Minnesota. Employers within the state have entered into collective bargaining agreements covering workers at many facilities. Mandating that workers receive eleven paid holidays would be inconsistent with and a substantial alteration of currently prevailing market conditions and a dramatic alteration of the terms of those collective bargaining agreements, which frequently provide six, seven, or perhaps eight paid holidays. The Imperative is unaware of *any* collective bargaining agreement that provides for workers to receive as many as eleven paid holidays.

The Proposed Rules would functionally rewrite the terms of all collective bargaining agreements covering Minnesota nursing home workers that are in place as of January 1, 2025, the effective date of the Proposed Rules. Proposed Rules 5200.2020 Subp. 2 (F) states that "an agreement between a nursing home employer and nursing home worker or labor union that fails to meet the minimum standards and requirements under parts 5200.2000 to 5200.2050 and the act is not a defense to an action brought under the act." The Proposed Rules would additionally require employers to negotiate with "a majority of affected nursing home workers" or their "exclusive representative" should they wish to make changes to the start and stop times for the "24-hour period comprising a holiday" or make changes to the government-mandated schedule of selected holidays. Proposed Rules 5200.2020 Subp. 2 (A)-(B).[3] Those provisions violate nursing home employers' rights under, and are preempted by the NLRA.

D. The Proposed Rules Violate the NLRA's Election and Recognition Provisions.

The NLRA is enforced by the National Labor Relations Board ("NLRB" or the "Board"). The NLRB has exclusive jurisdiction for enforcing the NLRA. The NLRB also has exclusive authority, in the course of interpreting and enforcing NLRA, to establish the conditions under which and the procedures through which private sector employers such as nursing homes must allow their

[3] Additionally, subpart 2, item C of Section 5200.2010 states that "Any agreement to modify a holiday date or time must be made in the calendar year preceding the start of the calendar year in which the modified holiday is observed. There must be written record of an agreement under this item." This language appears to require an annual process that must occur each year for the following calendar year. Such action would essentially reopen negotiations for CBAs on an annual basis. That mandated reopening of nursing home employers' CBAs with unions would violate "reopener" provisions known to undersigned counsel, and is another example of why the Proposed Rules are preempted by the NLRA.

employees to engage in concerted activity, pursue union representation, and vote on their terms and conditions of employment. The Proposed Rules obligate nursing homes to allow employees, including supervisors, to vote on which holidays they wish to have paid, in violation of the NLRA's establishment of the NLRB as the federal agency with exclusive jurisdiction to govern such procedures and rights under the NLRA.

More specifically, the Proposed Rules do not provide any guidance regarding the process through which employees would vote on paid holidays. Therefore, supervisory and non supervisory employees would apparently vote collectively. Apart from all of the other defects identified in this Comment, nursing home employees could face the following claim under the NLRA: that their supervisors violated 29 U.S.C. §158(a) through their innocent conduct during voting procedures. The Proposed Rules further violate the NLRA by requiring nursing homes to in effect recognize and allow supervisory employees to collectively vote on a term of their employment (paid holidays), in violation of the NLRA's treatment of supervisors. The Proposed Rules further violate the NLRA by requiring nursing homes to allow supervisory employees, who do not have a legally protected right to engage in protected concerted activity such as voting on their terms and conditions of employment, to vote on which holidays should be paid under the Proposed Rules.

E. The Proposed Rules Violate the Constitution by Interfering with Existing Contractual Relationships.

The Proposed Rules additionally violate both the U.S. and Minnesota constitutions because they rewrite the terms of existing collective bargaining agreements that extend beyond January 1, 2025, the Proposed Rules' effective date. The Contracts Clause of the United States Constitution provides that no "state shall pass any Law impairing the Obligations of Contracts." U.S. Const. Art. 1., §10, Cl. 1. Minnesota's constitution similarly provides that no law "impairing the obligation of contracts shall be passed." Minn. Const. Art. 1, §11. By modifying the holiday pay provisions of existing collective bargaining agreements, the Proposed Rules run afoul of both constitutions. In analyzing whether a state action violates the Contract Clause, courts in the Eighth Circuit apply a three-part test. First, the court determines whether the state law has, in fact, operated as a substantial impairment on pre-existing contractual relationships." *Am. Fed'n of State, Cnty. & Mun. Emps. v. City of Benton, Arkansas*, 513 F.3d 874, 879 (8th Cir. 2008) (quoting *Equip. Mfrs. Inst. V. Janklow*, 300 F.3d 842, 850 (8th Cir. 2002)). This first prong involves its own "three-part inquiry: '[1] whether there is a contractual relationship, [2] whether a change in law impairs that contractual relationship, and [3] whether the impairment is substantial.'" *Id.* (quoting *Gen. Motors Corp. v. Romein*, 503 U.S. 181, 186 (1992)). Second, if contractual impairment exists, the court considers "whether the state has a 'significant and legitimate public purpose behind the regulation.'" *Id.* (quoting *Educ. Employees Credit Union v. Mut. Guar. Corp.*, 50 F.3d 1432, 1438 (8th Cir. 1995)). If there "is no significant and legitimate public purpose," the state law is deemed unconstitutional. *Id.* Third, "if the state identifies such a public purpose, we [the court] lastly consider 'whether the adjustment of the rights and responsibilities of contracting parties is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the legislation's adoption.'" *Id.* (quoting *Energy Reserves Group, Inc. v. Kan. Power & Light Co.*, 459 U.S. 400, 412 (1983).

Under this analysis, the Proposed Rules violate the Contracts Clause. As to the first prong, existing collective bargaining agreements constitute contractual relationships, the Proposed Rules would impair the holiday pay provisions within those agreements, and the impairment would be substantial. If the Proposed Rules are enacted, nursing homes would be forced to provide increased compensation to employees for nearly twice as many holidays as they have previously bargained for. The Proposed Rules fail under the second and third prongs because no sufficient justification exists for discarding important terms of employment established through years of collective bargaining in order to provide increased pay on government-selected holidays for the subset of Minnesota employees who work in nursing homes.

F. The Proposed Rules Establish Obligations With Respect to the Compensation of Exempt Employees, which Conflict with Employers' Obligations Under the FLSA.

The FLSA requires that non-exempt employees be paid overtime under certain conditions. The FLSA establishes no such requirement for "exempt", salaried employees. Therefore, most employers provide exempt employees with paid holidays, but do not pay such employees at a time and one half rate if they work a holiday because (1) those nursing home employers do not calculate regular and overtime rates for their exempt employees, and (2) exempt employees generally do not track and report their hours worked, whether "regular" hours, or hours worked on a holiday.

G. The Proposed Rules Violate the United States and Minnesota Constitutions by Prioritizing Christian Religious Holidays.

The Imperative respects and celebrates the rich diversity of the workforce and residents in Minnesota nursing homes, where a range of cultural and religious holidays are currently celebrated. The Proposed Rules, however, prioritize the Christian religious holiday of Christmas while excluding holidays of other religions. The Proposed Rules prohibit recognition of a different religious holiday in place of a government-selected holiday unless permission is obtained through negotiations with workers or their union. Proposed Rules 5200.2020 Subp. 2 (A)-(B).

The Proposed Rules violate the Establishment Clause of the First Amendment by prioritizing Christmas over non-Christian religious holidays. *See* U.S. Const. Amend. I ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.") The principle "against favoritism and endorsement" of particular religions is the "foundation of Establishment Clause jurisprudence." *Lee v. Weisman*, 505 U.S. 577, 627 (Souter, J., concurring) (1992). Similarly, the Proposed Rules violate Minnesota's freedom of religion clause by preferring the Christian holiday over holidays of other religions. Minn. Const. Art. I., §16 (stating that no "preference be given by law to any religious establishment or mode of worship").

IV. CONCLUSION:

The NHWSB's Proposed Rules are legally defective and cannot be lawfully enforced against Minnesota nursing home employers for the reasons summarized in this Comment. The Imperative, therefore respectfully requests that the NHWSB withdraw its Proposed Rules.

Sincerely,

Robert C. Castle

Enclosure
cc: Care Providers of Minnesota (via email; w/encl.)
LeadingAge Minnesota (via email; w/encl.)
Aaron M. Scott, Esq. (via email; w/encl.)
Claire Colby McVan, Esq. (via email; w/encl.)

EXHIBIT A

An employee dining room/lounge area shall be available for the convenience of the employees. The employees shall have a lounge available to them to which the residents have only limited access.

14.2 Break Periods

Employees shall receive paid breaks according to the number of hours worked.

Length of Shift

4 hours to 6 hours

6 hours to 7.25 hours

7.25 hours to 12 hours 12 ½ hours or more

Break Times

One paid 15-minute break One paid 20-mlnutc brcak

Two paid 15-minute breaks and one unpaid 30-minute break Two paid 30-minute breaks

Article 15 – Holidays

15.1 Employees who have completed their probationary period and work the following holidays shall be paid at the rate of double time for all hours worked on such days:

New Year's Day	Labor Day
Memorial Day	Thanksgiving
July 4th	Christmas Day

15.2 Upon completion of one (1) year, full-time employees will bc given an additional two (2) floating holidays to be taken at a time mutually agreed upon between each individual employee and Providence Place. With proper notice, employees may take floating holidays on weekends, in conjunction with properly scheduled and approved vacation.

15.3 Full-time employees who have completed their probationary period and who do not work on the designated holidays shall receive one (1) day's holiday pay at their regular straight time rate of pay as holiday pay.

15.4 Employees who are absent on their scheduled workday prior to or after a holiday shall not be eligible for holiday pay.

15.5 Employees scheduled to work a holiday, but who do not work such holiday, shall not receive holiday pay.

15.6 For the purpose of the above two paragraphs, scheduled shall mean a regularly scheduled shift or a shift that an employee has agreed to work.

15.7 Each department shall determine how holiday coverage will be scheduled. Should agreement not be reached, seniority shall prevail. Notwithstanding, employees shall be expected to work two (2) out of the three (3) following holidays: Thanksgiving, Christmas Day and New Year's Day on a rotating year-to-year basis. (Example: Should an employee have Christmas Day off this year, that employee shall be expected to work Christmas Day next year.) Each department shall post the policy for that department. The Holiday schedule shall be posted fourteen (14) days in advance of the holiday.

Article 16 – Vacations

16.1 Full and part-time employees are eligible for paid vacation according to the following eligibility criteria, accrual schedule and scheduling needs. On-call employees will not accrue vacation. On-call employees who have accrued vacation may utilize and/or "cash out" 100% of that vacation in accordance with this Agreement.

16.2 To be eligible for paid vacation, employees must have completed one (1) year of employment with the Employer.

16.3 Accrual Schedule

Any hours worked less than 2080 hours (1950 hours for NA/Rs hired after November 1, 2001) will be prorated.

NAR Hired ON or AFTER 1/1/01

Lifetime Hours	Rate	Accrual Max
1950	0.026924	52.5
3900	0.038462	75
9450	0.038462	112.5
19500	0.076924	150

NAR hired before 1/1/01, HUC, Receptionist

Lifetime Hours	Rate	Accrual Max
2080	0.026924	56
4160	0.038462	80
10400	0.038462	120
20800	0.076924	160

LPN

Lifetime Hours	Rate	Accrual Max
2080	0.038462	80 hours
6240	0.057693	120 hours

From: Chet Fishel
To: RULES, DLI (DLI)
Subject: Workforce Standards Board Holiday Letters
Date: Monday, September 9, 2024 9:49:20 AM
Attachments: image001.png
WFS Board Response FHC.pdf
WFS Board Response VHC.pdf

Dear Executive Director Solo,

Please find attached letters regarding the Holiday Pay Rule. I am submitting 2 letters, one for each of my care centers that I run in Duluth, MN.

Chester Fishel, RN LNHA LALD
Administrator

Viewcrest Health Center 218.279.4203
Franciscan Health Center 218.302.6988
Suncrest Assisted Living 218.878.1180
chet.fishel@sfhs.org

Submitted Electronically
09/09/2024

Leah Solo, Executive Director
Nursing Home Workforce Standards Board
443 Lafayette Rd. N., St. Paul
MN 55155

Reference: Comment to Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 – 5200.2050, Revisor's ID Number R-04870

Dear Executive Director Solo,

Thank you for the opportunity to comment on the proposed holiday pay rule. I am writing to respectfully urge the Nursing Home Workforce Standards Board (the Board) to reconsider this mandate, as it poses significant challenges to nursing homes across Minnesota, especially as it remains an unfunded obligation.

To begin, Franciscan Health Center has always supported the fair compensation of our employees, and we recognize the importance of a sustainable wage. However, it is the duty of our elected officials to ensure that any new financial burdens placed on healthcare providers, such as this holiday pay standard, are accompanied by proper funding. Nursing homes, which already face considerable financial pressures, cannot absorb these costs without support. Despite our advocacy for wage increases in the past legislative session through HF3391/SF4130, the proposed funding for employee compensation was not approved, leaving us in a dire position.

The holiday pay rule will require nursing homes to designate eleven holidays where employees must be paid time and a half. While the option to substitute four holidays with employee consent is allowed, the reality of implementing this in a short timeframe, with the rule likely only approved by November 2024 and effective January 1, 2025, creates immense logistical and financial strain. This rule was developed without fully considering its impact on nursing homes, particularly those already operating with thin margins in a labor market that continues to shrink.

Unfunded Mandate:
This rule represents a significant unfunded mandate. If nursing homes are required to implement time and a half pay for these holidays, there must be corresponding funding allocated. For example, in our facility, this would mean an additional $18,903 in holiday pay costs for 2025. Given the constraints we already face, these costs would force us to make difficult decisions about cutting back on other critical expenses—jeopardizing the quality of care we provide to our residents.

Financial Challenges:
Our facility, like many others in Minnesota, cannot simply adjust our rates to account for this increase in labor costs. Unlike businesses in other sectors, we are bound by Medicaid, Medicare, and private pay rates that are determined well in advance and do not account for new mandates. The Medicaid and CHIP Payment and Access Commission has reported that Medicaid only covers 86% of nursing home costs, leaving us at a financial disadvantage even before this new rule. Without state funding to support this increase, nursing homes may be forced to close their doors or reduce services, further limiting access to essential care for Minnesota's elderly population.

Operational and Implementation Challenges:
The timeline for implementation is highly problematic. Our organization would have less than two months to finalize a holiday schedule for 2025, requiring employee approval and major adjustments to payroll and scheduling. The Board's approach does not take into account the practical realities of running a nursing home. Additionally, we already offer holidays such as New Years Day, Easter, Memorial Day, July 4th, Labor Day, Thanksgiving, and Christmas Day, and adjusting these in accordance with the state holiday schedule will cause confusion and additional strain on our operations.

Impact on Care Access:
Ultimately, this rule places the financial burden on nursing homes without ensuring that our seniors will continue to receive the care they need. Many facilities, particularly those in rural areas like ours, are already struggling with staffing shortages and rising costs. Adding these holiday pay requirements without the necessary funding will put us in an impossible position, forcing us to make difficult choices that may include reducing services, limiting admissions, or in the worst-case scenario, closing our doors altogether.

I respectfully ask that the Board reconsider the holiday pay rule and work with the Legislature to secure adequate funding before imposing any new financial requirements on nursing homes. Without this support, the proposed rule will do more harm than good, particularly to the vulnerable populations we serve.

Thank you for considering my comments. I also request that a public hearing be held to further discuss this matter and its far-reaching consequences.

Sincerely,

Chester Fishel, Administrator
Franciscan Health Center, Duluth

Good Samaritan Society®
HOWARD LAKE

413 13th Ave
Howard Lake, MN 55349

Phone: 320-543-3800
Fax: 320-543-2305
www.good-sam.com

September 25, 2024

To Administrative Law Judge Joseph Meyer,

I am writing this letter to you today regarding OAH Docket Number 28-9001-40213 and the Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 - 5200.2050.

I have been the Administrator at Good Samaritan Society – Howard Lake skilled nursing facility in Howard Lake, MN for over 16 years. Howard Lake is a small, rural community of roughly 2,300 people located about 45 minutes west of Minneapolis, MN.

Our 32-bed skilled nursing facility serves seniors who have lived their entire lives in our community, but we also serve as a lifeline for patients who need to be discharged from nearby hospitals in the Twin Cities that can't find a nursing home in the metro where they live. Three out of our top five referring hospitals are one hour away from us – two of them being in the Twin Cities.

We are a 5-star location and provide highly specialized care and services. We are the only contracted VA facility for our county, serving an average of four Veterans every day.

We provide an array of services including short term rehabilitation, long term care, outpatient therapy, respite care, end of life care and meals delivered to community members in their home.

We are also a major employer in our community.

I oppose the proposed rule language and request a public hearing. My opposition is based on one primary reason - it is unfunded.

Unlike other businesses, skilled nursing facilities in the state of Minnesota do not have the ability to increase the amount we charge our customers to help cover the cost of a sudden increase in expenses. Our revenue is based on costs incurred 15 to 27 months prior, so this mandate would require an increase in expenses without additional revenue to offset it. This would bring great concern to any business.

I am not opposed to increasing benefits for our employees, but it must be funded and take into consideration how skilled nursing facilities in MN are reimbursed.

Thank you for your time.

Sincerely,

Laura Salonek

Administrator

Good Samaritan Society – Howard Lake

From:	Salonek,Laura
To:	RULES, DLI (DLI)
Subject:	Comment Letter
Date:	Wednesday, September 25, 2024 4:32:30 PM
Attachments:	doc02412120240925162953.pdf

Please see my attached comments regarding 28-9001-40213.

Thank you,

Laura

Laura Salonek, HSE
Administrator
Good Samaritan Society
413 13th Ave, Howard Lake, MN 55349
Phone: (320) 543-4400
Fax: (320) 543-2305
lsalonek@good-sam.com | www.good-sam.com/howardlake
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From: Anderson,Mark
To: RULES, DLI (DLI)
Subject: Comment OAH Docket Number: 28-9001-40213
Date: Wednesday, September 25, 2024 3:34:36 PM
Attachments: image003.png
Letter - 2024 Work Force Standards.docx

Please see attached. Thank you – Mark Anderson

Mark Anderson
Administrator
NHA, LALD
Good Samaritan Society - Inver Grove Heights
1301 50th Street East
Inver Grove Heights, MN 55076
651-289-0685
Good Samaritan Society - Stillwater
1119 Owens Street North
Stillwater, MN 55082
651-666-4682

Date: August 30, 2024

OAH Docket Number: 28-9001-40213

Presiding Judge: Administrative Law Judge Joseph Meyer

Comment Period: August 26, 2024 through 4:30 p.m. on September 25, 2024

Re: Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice

Posting Requirements; Minnesota Rules, Part 5200.2000 - 5200.2050.

I am a duel Administrator for two nursing homes in Minnesota, Good Samaritan Society – Inver Grove Heights and Good Samaritan Society - Stillwater.

Nursing homes are heavy regulated, highly scrutinized, and underfunded. Yet, as a necessary health care option, providers continue to rise to the challenges and provide care and services to a major population of older Minnesotans.

The proposed rule mandates that a nursing home employee who works any of the specified eleven holidays is paid a minimum of time-and-one-half their regular hourly wage for all hours worked during the holiday. I oppose the proposed rule language and request a public hearing.

- The mandated eleven state holidays are unfunded. Minnesota's antiquated Medicaid nursing facility payment system uses a facility submitted cost report. After auditing, the Minnesota Department of Human Services (DHS) January establishes Medicaid Rates on January 1 that reflect costs incurred 15 to 27 months prior. Those costs are no longer accurate as they do not reflect inflation since the original time of purchase.
- Nursing facilities engage in annual budgeting processes that begin a full year in advance. The mandated state holidays are an unanticipated change and are an unplanned expenditure.
- As of today, September 25, 2024, the January 1, 2025 effective date allows little time to implement the mandated eleven holidays. Nursing facilities are open 24 hours a day, seven days a week, 365 days a year. Planning and scheduling holidays requires detailed planning. Employees value certain holidays more than others. Employees also understand the inherent trade-offs of wanting to take Easter off will mean working on July Fourth. The proposed rule will become administrative law a month before the effective date.

- Our organization has nursing facilities in other states. The proposed rule will create either additional expenditure or administrative burden for our organization when implementing this Minnesota specific mandate.
- Our nursing facility currently contracts with vendors for (housekeeping, laundry, dietary etc.). It is not clear if these standards apply to the contracted employees, if our contracts need to be opened, or if this is interfering with our vendor contracts. We are concerned that the January 1, 2025 effective date and lack of funding will make this unworkable.

Thank you for your consideration.

Sincerely,

Mark Anderson, Duel Administrator

Good Samaritan Society – Inver Grove Heights

Good Samaritan Society – Stillwater

Becerra, Linnea (She/Her/Hers) (DLI)

From: Jensen,Susan <sjensen7@good-sam.com>
Sent: Tuesday, September 17, 2024 12:57 PM
To: RULES, DLI (DLI)
Subject: Attention: Leah Solo at the Department of Labor and Industry 443 Lafayette Rd. N., St. Paul, MN 55155
Attachments: NHWSB_CommentLetterHolidayCWOPostingRequirements (002).docx

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Date: September 27, 2024

OAH Docket Number: 28-9001-40213

Presiding Judge: Administrative Law Judge Joseph Meyer

Comment Period: August 26, 2024 through 4:30 p.m. on September 25, 2024

Re: Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 - 5200.2050.

I am the administrator at the Good Samaritan Society Maplewood in St. Paul, Minnesota.

We are a skilled nursing facility that serves both post-acute and long-term care residents. We are a provider of choice in our community and receive most of our referrals from the local hospitals, and other senior centers when more care is needed. Our current challenge is finding and hiring enough staff to be able continue to care for more residents.

The proposed rule mandates that a nursing home employee who works any of the specified eleven holidays is paid a minimum of time-and-one-half their regular hourly wage for all hours worked during the holiday. I oppose the proposed rule language and request a public hearing.

- The mandated eleven state holidays are unfunded. Minnesota's Medicaid nursing facility payment system uses a facility submitted cost report. After auditing, the Minnesota Department of Human Services (DHS) January establishes Medicaid Rates on January 1 that reflect costs incurred 15 to 27 months prior.

- Nursing facilities engage in annual budgeting processes that begin a full year in advance. The mandated state holidays are an unanticipated change and are an unplanned expenditure.

- The January 1, 2025 effective date allows little time to implement the mandated eleven holidays. Nursing facilities are open 24 hours a day, seven days a week, 365 days a year. Planning and scheduling holidays requires detailed planning. Employees value certain holidays more than others. Employees also understand the inherent trade-offs of wanting to take Easter off will mean working on July 4. The proposed rule will become administrative law a month before the effective date.

- Our organization has nursing facilities in other states. The proposed rule will create either additional expenditure or administrative burden for our organization when implementing this Minnesota specific mandate.

Thank you for your consideration.
Sincerely,
Susan Jensen, Administrator/Good Samaritan Society Maplewood

From: Wepplo,Nancy
To: RULES, DLI (DLI)
Subject: Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 - 5200.2050.
Date: Wednesday, September 25, 2024 2:43:57 PM
Attachments: image001.jpg

Date: September 25, 2024

OAH Docket Number: 28-9001-40213

Presiding Judge: Administrative Law Judge Joseph Meyer

Comment Period: August 26, 2024 through 4:30 p.m. on September 25, 2024

Re: Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 - 5200.2050.

I am the Administrator at Good Samaritan Society-Windom in Windom, MN.

We are located on a campus that includes a 63-bed skilled nursing facility, a 24-unit Assisted Living building, and a 28-unit Independent Living building. Windom is the Cottonwood County seat and has appx. 4,800 citizens. Our campus is one of the larger employers in our city and employs appx 115 people. We are an integral part of our community.

The proposed rule mandates that a nursing home employee who works any of the specified eleven holidays is paid a minimum of time-and-one-half their regular hourly wage for all hours worked during the holiday. I oppose the proposed rule language and request a public hearing.

- The mandated eleven state holidays are unfunded. Minnesota's Medicaid nursing facility payment system uses a facility submitted cost report. After auditing, the Minnesota Department of Human Services (DHS) January establishes Medicaid Rates on January 1 that reflect costs incurred 15 to 27 months prior.

  Because we are a campus, we work hard to treat all of our employees the same, across all service levels. Not only will this unfunded mandate effect our SNF, it will also greatly affect our assisted living services. Approximately half of the AL clients are on county waiver services. The reimbursement we receive from the county barely covers the services we provide, let alone this additional unfunded mandate.
- Nursing facilities engage in annual budgeting processes that begin a full year in advance. The mandated state holidays are an unanticipated change and are an unplanned expenditure.

  The timing of this mandate leaves no time to plan for this additional expense. Our 2025 budget is already complete.

- The January 1, 2025 effective date allows little time to implement the mandated eleven holidays. Nursing facilities are open 24 hours a day, seven days a week, 365 days a year. Planning and scheduling holidays requires detailed planning. Employees value certain holidays more than others. Employees also understand the inherent trade-offs of wanting to take Easter off will mean working on July 4. The proposed rule will become administrative law a month before the effective date.

  Changes to our human resources practices should be made carefully and mindfully, so they do not adversely affect our employees. This mandate leaves little time for a proper response time.
- We also operate licensed an assisted living facility *(home health, hospice agencies, and hospitals)* on our campus. Assisted living staff may not work at a nursing facility but they are employees of our organization. The proposed rule will create either additional expenditure and/or administrative burden for our organization when implementing this Minnesota specific mandate.
- Our organization has nursing facilities in other states. The proposed rule will create either additional expenditure or administrative burden for our organization when implementing this Minnesota specific mandate.

  As noted above, because we are a campus, we work hard to treat all of our employees the same, across all service levels. Not only will this unfunded mandate effect our SNF, it will also greatly affect our assisted living services. Approximately half of the AL clients are on county waiver services. The reimbursement we receive from the county barely covers the services we provide, let alone this additional unfunded mandate.
- Our nursing facility currently contracts with vendors for therapy services. It is not clear if these standards apply to the contracted employees, if our contracts need to be opened, or if this is interfering with our vendor contracts. We are concerned that the January 1, 2025 effective date and lack of funding will make this unworkable.

  This mandate is not written clearly, explaining the full impact to our operating budget.

  In summary this mandate is not well thought out and leaves us little time to respond in an effective manner as related to human resource practices being changed, as well as operating practices, including proper budgeting, being changed. We would appreciate a proper timeline be set that allows us to respond appropriately, as well as funding be provided for the new costs that will be incurred.

Thank you for your consideration.

Sincerely,

Nancy E. Wepplo

Campus Administrator
Good Samaritan Society-Windom, Windom, MN
507-831-1788
Where the will of God leads you, the grace of God will keep you.

KNUTE NELSON | walker methodist

September 3, 2024

Submitted Electronically

Leah Solo, Executive Director
Nursing Home Workforce Standards Board
443 Lafayette Rd. N., St. Paul
MN 55155

Reference: Comment to Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 – 5200.2050, Revisor's ID Number R-04870

Dear Executive Director Solo:

Thank you for the opportunity to comment on the proposed holiday pay rule. While we appreciate the Board's efforts to improve the well-being of workers in our state, we have reservations about its practical implementation.

At Knute Nelson | Walker Methodist, our commitment to putting people first is at the heart of everything we do. This includes the care we provide our residents and the support and respect we offer our employees. We recognize the importance of fair compensation and are committed to ensuring our staff members are fairly rewarded for their essential work.

However, we believe that any new standards, such as the proposed holiday pay rule, must be thoughtfully implemented with consideration for the practical realities we face. Specifically, we are concerned about this rule's financial and operational impacts, especially without additional state funding to support these changes.

As an organization, we rely on state funding to support our workforce. Despite our continuous advocacy for increased funding, the state has not allocated the necessary resources to implement the Board's proposed rule.

Therefore, we respectfully request that the Board consider the broader implications of this rule on the financial sustainability of providers and the availability of care for Minnesota's seniors.

We believe that with adequate funding, these standards can be implemented in a way that benefits both employees and residents. However, without such funding, the unintended consequence may be a reduction in resources available for other critical aspects of care, potentially affecting the quality and availability of services.

In the spirit of partnership, we urge the Board to work closely with state lawmakers to secure the necessary funds to support this initiative. Only through collaboration can we ensure our employees receive the compensation they deserve while maintaining the high standard of care our residents rely on.

We also ask the Board to consider a more realistic timeline for implementing this rule. The proposed effective date of January 1, 2025, presents significant challenges in updating holiday schedules, payroll practices, and overall budget planning. An extended timeline would allow us to engage our employees, gather feedback, and smoothly implement a new policy that respects both their needs and preferences and the operational realities we face.

Our organization serves as a vital resource in our community, and we are committed to upholding our responsibilities to the residents, their families, and our dedicated staff. We ask that the Board consider the unique challenges nursing homes face, especially those in rural areas where the financial burden may be even more significant.

While we support the goals behind the proposed rule, we believe that a collaborative approach that includes adequate funding and a reasonable timeline is essential to achieving the desired outcomes. Therefore, we oppose the rule as written and respectfully request a public hearing to provide an opportunity to add critical voices to this conversation. We are eager to work together to find solutions that ensure the well-being of our employees and the continued provision of quality care for our residents.

Thank you for considering our comments. We appreciate the opportunity to contribute to this conversation as we work toward our shared goal of supporting both Minnesota's caregivers and its aging population.

Sincerely,

Katie Perry

Katie Perry
Chief Operating Officer/Executive Vice President
Katie.perry@knutenelson.org

From:	Katie Perry
To:	RULES, DLI (DLI)
Cc:	Katie Perry
Subject:	Comment to Proposed Rules Governing Holiday Pay
Date:	Wednesday, September 4, 2024 8:47:03 AM
Attachments:	image001.png Comment to Proposed Rules for Holiday Pay - NHWSB.pdf

Dear Executive Director Solo:

I am submitting our response to the Proposed Rules Governing Holiday Pay. Please refer to the attached document.

Sincerely,

Katie Perry

Chief Operating Officer/Executive Vice President

P: 320-763-1153 | C: 320-760-3791

2209 Jefferson St. Suite 201, Alexandria, MN 56308

11055 Wayzata Blvd Suite 200, Minnetonka, MN 55305

knutenelson.org | walkermethodist.org

From: Kathy Dobson
To: RULES, DLI (DLI)
Subject: Minnesota Nursing Home Workforce Standards Board (NHWSB)
Date: Tuesday, September 24, 2024 5:45:41 PM
Attachments: image001.png
image002.png
image003.png
image004.png
image005.png
NHWSB Comment Letter Holiday-CWO-Posting Requirements 2024.docx

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Attention: Leah Solo at the Department of Labor and Industry
Please see attached letter, on behalf of Lakewood Health System's Senior Services Division, in response to the NHWSB Proposed Rule.
Thank You,

Kathy Dobson
Vice President Senior Services
OFFICE: 218-894-8344
LAKEWOOD HEALTH SYSTEM
401 Prairie Ave NE | Staples, MN 56479

Lakewood HEALTH SYSTEM

Date: September 26, 2024

OAH Docket Number: 28-9001-40213

Presiding Judge: Administrative Law Judge Joseph Meyer

Comment Period: August 26, 2024 through 4:30 p.m. on September 25, 2024

Re: Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 - 5200.2050.

I am the Vice President of Senior Services at Lakewood Health System (LHS).

Lakewood Care Center (LHS CC) is a 100-bed, dual Medicare/Medicaid certified skilled nursing facility in Staples, Minnesota (MN), and is owned and operated by Lakewood Health System. Lakewood Health System is an independent rural healthcare organization founded in 1936 and has grown from a small city-owned hospital to an integrated healthcare delivery system providing care at ten (10) facilities within a five (5) county service area of Cass, Crow Wing, Morrison, Todd, and Wadena. The facilities include a 25-bed critical access hospital, five (5) primary care clinics, a dermatology clinic, skilled long-term care facility, and two (2) assisted living facilities.

Lakewood Care Center is an important pillar of care for LHS and helps the organization fulfill its mission of "*providing quality, personalized healthcare for a lifetime*." LHS CC provides comprehensive care and services for older adults, including:

- Lakewood Care Center: offers long-term living options and short-term rehabilitation, secured memory care services, senior behavioral health consultations, and social services including a chaplaincy program. LHS CC has 87 active beds with 13 on layaway. Census at LHS CC, thus far in 2024, has been averaged approximately 88% occupancy.
- Lakewood Manor and Lakewood Pines: provides health-related and supportive services for tenants who require advanced care and for those who seek independent lifestyles. There are 26 and 43 apartments, respectively.
- Home-Based Services: consists of home care, hospice, palliative care, and telehealth home monitoring and serves an average of about 150 clients.

Demographics: According to U.S. Census Bureau, nearly 23% of the population living in the service area are age 65 and older (38,900 of 170,254). Among those who are 65 years and older, LHS provided care to 6,950 patients, residents and tenants in calendar year 2023. The race and ethnicity in the region are primarily White and non-Hispanic.

LHS CC is proud to be able to state that we have been rated an overall 5 STAR facility for over a decade, living out our mission, vision, and values. According to AHCA Trend Tracker, we are outperforming both State and National benchmarks for all staff turnover and retention rates in our nursing home.

The proposed rule mandates that a nursing home employee who works any of the specified eleven holidays is paid a minimum of time-and-one-half their regular hourly wage for all hours worked during the holiday. I oppose the proposed rule language.

- The mandated eleven state holidays are unfunded. Minnesota's Medicaid nursing facility payment system uses a facility submitted cost report. After auditing, the Minnesota Department of Human Services (DHS) January establishes Medicaid Rates on January 1 that reflect costs incurred 15 to 27 months prior. This mandate creates additional financial stress to long term care facilities that are already struggling, with several facilities having to downsize or close their facilities, even though we know of the significant need for these services for the growing senior populations in our State. The impact to our nursing home is estimated between $20,000 - $30,000 annually.
- Nursing facilities engage in annual budgeting processes that begin a full year in advance. The mandated state holidays are an unanticipated change and are an unplanned expenditure, again, creating undue financial stress to our facilities.
- The January 1, 2025 effective date allows little time to implement the mandated eleven holidays. Nursing facilities are open 24 hours a day, seven days a week, 365 days a year. Planning and scheduling holidays requires detailed planning. Employees value certain holidays more than others. Employees also understand the inherent trade-offs of wanting to take Easter off will mean working on July 4. The proposed rule will become administrative law a month before the effective date and disrupts facility processes and procedures.
- As stated above, we are an integrated health system that includes a CAH hospital, clinics, two licensed assisted living facilities, and Home Health and Hospice Services. Assisted living staff may not work at a nursing facility but they are employees of our organization. LHS works hard to create equity in employee benefits to enhance our recruitment and retention efforts in the field of health care, which is known to have struggled over the past years. The proposed rule will create either additional expenditure, administrative burden, and equity concerns for our organization when implementing this Minnesota nursing home-specific mandate.
- Our nursing facility currently contracts with vendors for physical therapy, occupational therapy, and speech and language pathology. It is not clear if these standards apply to the contracted employees, if our contracts need to be opened, what additional financial burden will be passed on to our nursing home, or if this is interfering with our vendor contracts. We are concerned that the January 1, 2025 effective date and lack of funding will make this unworkable.
- As with other nursing home-specific rules, I would ask that this be reconsidered not only for the financial impact to our service lines, but also for equity across healthcare and other industries. The workforce shortages have a deeper root case than simply mandating additional wage and benefits rules. Our nursing homes are working hard to care for our senior population with limited funding. We continue to create innovative facility level actions that makes sense for our staff and our communities. This mandate is a blanket

Lakewood
HEALTH SYSTEM

solution with limited impact. For example, our facility employees may benefit more from lower or free healthcare premiums, additional retirement plan matches, etc. Giving each facility fair funding to use in ways that match the needs of its employees is a better intervention to our work force concerns than simply mandating additional holiday pay.

Thank you for your time and consideration.

Sincerely,

Kathy M. Dobson
Vice President Senior Services
Lakewood Health System

From:	Jeff Heinecke
To:	RULES, DLI (DLI)
Subject:	Proposed Rule Governing Holiday Pay
Date:	Wednesday, September 25, 2024 10:38:53 AM
Attachments:	image002.jpg Letter to Leah Solo from Jeffrey Heinecke Lyngblomsten_09252024.pdf

Please find the attached letter which includes comments on the proposed rule governing holiday pay.

Jeffrey Heinecke
Chief Executive Officer
Lyngblomsten
1415 Almond Avenue
St. Paul, MN 55108
Enhancing the Lives of Older Adults and Their Families Since 1906
P: (651) 632-5308 | Visit online at www.lyngblomsten.org

cid:image003.jpg@01DAE7FC.DD24C400

Submitted Electronically

September 25, 2024

Leah Solo, Executive Director
Nursing Home Workforce Standards Board

Reference: Comment to Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 – 5200.2050, Revisor's ID Number R-04870

Dear Executive Director Solo,

I am writing today to express my serious concerns regarding the holiday pay proposed rule and respectfully request the Nursing Home Workforce Standards Board to reconsider this standard and rule.

As President & CEO of Lyngblomsten in St. Paul, I know how important it is to provide our long-term care workers with the compensation they deserve. I'm proud to share that Lyngblomsten provides its employees with competitive wages and a comprehensive benefits package—one of the best in the long-term care industry—and that we're always looking for ways to make our compensation offerings even more robust. Lyngblomsten does all of this because we believe that our employees' compensation should be commensurate with the incredible work they perform each and every day in serving older adults.

That said, while I support efforts to expand holiday pay for long-term care employees, I have significant concerns with the Nursing Home Workforce Standards Board's current proposal for bringing this about. For the Board to assume that all organizations will be able to cover the associated costs without additional funding from the legislature defies logic. Every organization is different, including their benefit packages and finances. If this rule goes into effect, Lyngblomsten and many other long-term care providers across the state will experience a negative financial impact. **This is an unfunded mandate**.

My other concern relates to this rule becoming effective on January 1, 2025. To implement the proposed rule, we would need to make decisions that require feedback from staff and possibly from our board of directors. Accomplishing this in three months is unrealistic, especially given the scope of change being proposed to our benefit offerings.

It is for these reasons that I oppose this entire rule and request its disposition be resolved during a public hearing.

Thank you for considering my comments and request for a public hearing.

Sincerely,

Jeffrey Heinecke

Jeffrey Heinecke
President & CEO
Lyngblomsten

From: Paxton Wiffler
To: RULES, DLI (DLI)
Subject: Comments for workforce standards board
Date: Friday, September 20, 2024 1:28:35 PM
Attachments: image769090.jpg
image456260.jpg
image233809.png
image277781.png
Holiday comments.pdf

Good afternoon,

Please see my attached letter, as I would like it entered as my comments for the proposed 11 holidays submitted by the workforce standards board.

Thank you for your consideration.
Paxton Wiffler

PAXTON WIFFLER
CHIEF OPERATING OFFICER
1345 Corporate Center Curve
Eagan,MN,55121
WWW.MONARCHMN.COM

MONARCH
HEALTHCARE MANAGEMENT

September 25, 2024

VIA EMAIL ONLY

Minnesota Department of Labor and Industry
Attn: Leah Solo
443 Lafayette Road North
Saint Paul, Minnesota 55155
[illegible]

Re: Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 - 5200.2050
OAH Docket No. 28-9001-40213

Dear Honorable Judge Joseph Meyer:

I am writing as the Chief Operating Officer of Monarch Healthcare Management, a skilled nursing company with 45 facilities throughout Minnesota. Our organization proudly supports 4,300 facility employees, and we also contract with vendors and agency staff when necessary to provide critical care to vulnerable populations, including elderly residents who depend on our services for daily living and medical support. Due to the nature of our operations, we encounter unique challenges in staffing and budgeting.

We oppose the proposed rule mandating that nursing home employees receive time-and-one-half pay for all hours worked during the eleven specified holidays, as we believe it will have several unintended consequences that will adversely impact both our facilities and the people we serve.

1. **Financial Challenges**

In the current landscape of record wage inflation and heightened competition for workers, our facilities face significant financial challenges that hinder our ability to attract and retain qualified staff. Competing industries, such as retail and food service, often offer higher wages and more flexible working conditions, which makes it increasingly difficult for us to fill essential positions. The unique role that our state and federal government partners play in supporting wages through Medicare and Medicaid complicates this issue further.

The Board's proposal to mandate higher pay for staff without providing additional funding places an untenable burden on nursing homes. We are being asked to meet the expectations of improved worker compensation while grappling with the financial realities of our operational budgets. The Medicaid and CHIP Payment and Access Commission has reported that current basic Medicaid rates only cover approximately 86% of nursing home costs. This existing shortfall means that many facilities are already operating at a financial disadvantage, struggling to cover the true costs of the care we provide.

638 SOUTH BEND AVENUE · MANKATO, MINNESOTA 56001
PHONE 507.625.8741 · FAX 507.387.4838 · WWW.MONARCHMN.COM

To maintain the quality of care that our residents deserve, it is imperative that nursing homes receive reimbursement that accurately reflects the actual costs of delivering services. Without this essential support, the proposed rule could exacerbate existing financial strain, forcing facilities to make difficult decisions that ultimately impact the quality of care and services available to our vulnerable populations. We urge the Board to recognize these financial challenges and provide the necessary funding to support fair employee compensation while ensuring the sustainability of nursing home operations.

2. Staffing and Schedule Changes

Skilled nursing facilities operate around the clock, 365 days a year. Scheduling staff for holidays is a delicate process that often requires careful negotiation, as employees have different preferences for which holidays they value. The proposed rule mandating time-and-a-half pay for all hours worked during the 11 specified holidays would significantly reduce this scheduling flexibility, making it more challenging to meet staffing needs while accommodating employee preferences.

While the intent of higher holiday pay is to benefit employees, the uneven distribution of holiday shifts—driven by seniority and individual preferences—could lead to resentment among staff. Some employees may not prioritize certain holidays, while others might feel compelled to work on days that are significant to them. This imbalance could harm employee morale over time, leading to increased turnover, especially if staff feel pressured to work undesirable shifts despite the additional pay.

The lack of flexibility in scheduling, coupled with the potential for conflict among staff regarding holiday assignments, may also strain labor relationships and disrupt the cooperative environment that is vital to our operations. With our already limited resources and the complexities introduced by this rule, maintaining a positive workplace culture while ensuring adequate staffing levels during the holidays could become increasingly challenging. Ultimately, these staffing and scheduling challenges could further jeopardize the quality of care we provide to our residents, undermining our mission to support the vulnerable populations who depend on our services.

3. Vendor and Contracting Issues

Additionally, our facilities rely on outside vendors for critical services such as housekeeping, laundry, and dietary support. The proposed rule raises significant uncertainty regarding whether contract employees would be subject to the same holiday pay requirements. If these vendors are required to comply with the new rules, it would necessitate reopening and renegotiating existing vendor contracts, adding yet another layer of complexity and strain to our operations.

The potential for increased costs associated with vendor compliance could further exacerbate the financial challenges we face, given our already tight operating margins. These renegotiations would not only consume valuable administrative resources but could also lead to disruptions in services during a time when stability is crucial for the well-being of our residents.

The necessity to navigate these contracting issues could distract our management teams from focusing on providing quality care and supporting our staff. As we strive to maintain the highest standards of service for our vulnerable populations, these additional burdens could compromise our mission and impact our ability to deliver essential services effectively.

4. **Implementation Challenges**

The January 1, 2025, effective date for this rule poses significant challenges for our organization. In addition to the financial implications of adding new holidays, we currently offer several paid holidays that are not recognized as official state holidays. Given the anticipated timeline for the approval of this rule, we will have less than two months to gather feedback from employees and establish a new holiday schedule for 2025.

Following this initial adjustment, we will face the daunting task of revising our payroll practices and scheduling policies to align with the new holiday schedule. The compressed timeline presents a substantial operational hurdle, as effective implementation will require careful coordination among various departments, including human resources and finance.

The Board's reluctance to consider a more realistic implementation date demonstrates a lack of understanding of provider operations and the complexities involved in executing significant changes within such a tight timeframe. To ensure a smooth transition and minimize disruption to our services, we respectfully urge the Board to reassess the implementation date, allowing sufficient time for facilities to prepare adequately. Without this consideration, the successful rollout of the new requirements may be severely compromised, ultimately affecting the quality of care we provide to our residents.

Thank you for your time and consideration.

Sincerely,

Paxton Wiffler
Chief Operating Officer
Monarch Healthcare Management
Pwiffler@monarchmn.com

From:	Katie Collins
To:	RULES, DLI (DLI)
Subject:	NHWSB holiday pay rule
Date:	Wednesday, September 25, 2024 3:41:21 PM
Attachments:	image447626.jpg image607949.jpg image047933.png image560513.png

September 25, 2024
VIA EMAIL ONLY
Minnesota Department of Labor and Industry
Attn: Leah Solo
443 Lafayette Road North
Saint Paul, Minnesota 55155
dli.rules@state.mn.us
Re: Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 - 5200.2050
OAH Docket No. 28-9001-40213
Dear Honorable Judge Joseph Meyer:
I am writing as a Regional Director of Operations of Monarch Healthcare Management, overseeing 9 skilled nursing facilities located in Northeast Minnesota. Our facilities proudly employ 30 to 120 individuals, and we also contract with vendors and agency staff when necessary to provide critical care to vulnerable populations, including elderly residents who depend on our services for daily living and medical support. Due to the nature of our operations, we encounter unique challenges in staffing and budgeting.
We oppose the proposed rule mandating that nursing home employees receive time-and-one-half pay for all hours worked during the eleven specified holidays, as we believe it will have several unintended consequences that will adversely impact both our facility and the people we serve.

1. **Financial Challenges**

In the current landscape of record wage inflation and heightened competition for workers, our facilities face significant financial challenges that hinder our ability to attract and retain qualified staff. Competing industries, such as retail and food service, often offer higher wages and more flexible working conditions, which makes it increasingly difficult for us to fill essential positions. The unique role that our state and federal government partners play in supporting wages through Medicare and Medicaid complicates this issue further.
The Board's proposal to mandate higher pay for staff **without providing additional funding** places an untenable burden on nursing homes. We are being asked to meet the expectations

of improved worker compensation while grappling with the financial realities of our operational budgets. The Medicaid and CHIP Payment and Access Commission has reported that current basic Medicaid rates only cover approximately 86% of nursing home costs. This existing shortfall means that many facilities are already operating at a financial disadvantage, struggling to cover the true costs of the care we provide.

To maintain the quality of care that our residents deserve, it is imperative that nursing homes receive reimbursement that accurately reflects the actual costs of delivering services. Without this essential support, the proposed rule could exacerbate existing financial strain, forcing facilities to make difficult decisions that ultimately impact the quality of care and services available to our vulnerable populations. We urge the Board to recognize these financial challenges and provide the necessary funding to support fair employee compensation while ensuring the sustainability of nursing home operations.

2. **Staffing and Schedule Changes**

Skilled nursing facilities operate around the clock, 365 days a year. Scheduling staff for holidays is a delicate process that often requires careful negotiation, as employees have different preferences for which holidays they value. The proposed rule mandating time-and-a-half pay for all hours worked during the 11 specified holidays would significantly reduce this scheduling flexibility, making it more challenging to meet staffing needs while accommodating employee preferences.

While the intent of higher holiday pay is to benefit employees, the uneven distribution of holiday shifts—driven by seniority and individual preferences—could lead to resentment among staff. Some employees may not prioritize certain holidays, while others might feel compelled to work on days that are significant to them. This imbalance could **harm employee morale** over time, leading to increased turnover, especially if staff feel pressured to work undesirable shifts despite the additional pay.

The lack of flexibility in scheduling, coupled with the potential for conflict among staff regarding holiday assignments, may also **strain labor relationships** and disrupt the cooperative environment that is vital to our operations. With our already limited resources and the complexities introduced by this rule, maintaining a positive workplace culture while ensuring adequate staffing levels during the holidays could become increasingly challenging. Ultimately, these staffing and scheduling challenges could further jeopardize the quality of care we provide to our residents, undermining our mission to support the vulnerable populations who depend on our services.

3. **Vendor and Contracting Issues**

Additionally, our facilities rely on outside vendors for critical services such as housekeeping, laundry, and dietary support. The proposed rule raises significant uncertainty regarding whether contract employees would be subject to the same holiday pay requirements. If these vendors are required to comply with the new rules, it would necessitate reopening and renegotiating existing vendor contracts, adding yet another layer of complexity and strain to our operations.

The potential for increased costs associated with vendor compliance could further exacerbate the financial challenges we face, especially given our tight margins in rural areas where we operate. These renegotiations would not only consume valuable administrative resources but could also lead to disruptions in services during a time when stability is crucial for the well-being of our residents.

The necessity to navigate these contracting issues could distract our management teams from focusing on providing quality care and supporting our staff. As we strive to maintain the highest standards of service for our vulnerable populations, these additional burdens could compromise our mission and **impact our ability to deliver essential services effectively**.

4. **Implementation Challenges**

The January 1, 2025, effective date for this rule poses significant challenges for our organization. In addition to the financial implications of adding new holidays, we currently offer several paid holidays that are not recognized as official state holidays. Given the anticipated timeline for the approval of this rule, we will have **less than two months** to gather feedback from employees and establish a new holiday schedule for 2025.

Following this initial adjustment, we will face the daunting task of revising our payroll practices and scheduling policies to align with the new holiday schedule. The compressed timeline presents a substantial operational hurdle, as effective implementation will require careful coordination among various departments, including human resources and finance.

This unfunded mandate adds additional strain to the already complex workforce challenges we're facing along with the unfunded federal staffing mandate looming over our heads. The current holiday pay structure is competitive in the employment market. If we saw any workforce advantage to adjusting our holiday benefits, we would have done so through union negotiations and/or market improvements and figured out if we could fund it. It's incredibly disheartening that a state government is allowing a union president to force his personal agenda onto so many Minnesotans, without a care as to the impacts of his reckless rules, stomping on the caregivers, operators and most vulnerable senior Minnesotans to get ahead in his career.

The Board's reluctance to consider a more realistic implementation date demonstrates a lack of understanding of provider operations and the complexities involved in executing significant changes within such a tight timeframe. To ensure a smooth transition and minimize disruption to our services, we respectfully urge the Board to reassess the implementation date, allowing sufficient time for facilities to prepare adequately. Without this consideration, the successful rollout of the new requirements may be severely compromised, ultimately affecting the quality of care we provide to our residents.

Thank you for your time and consideration.

Sincerely,

Katie Collins

KATIE COLLINS
REGIONAL DIRECTOR OF OPERATIONS
1345 Corporate Center Curve
Eagan,MN,55121
218-850-0103
WWW.MONARCHMN.COM

PARKVIEW MANOR

PARKVIEW MANOR
308 W. Sherman Avenue • Ellsworth, MN 56129
Phone 507-967-2482 • Fax 507-967-2141

August 30, 2024

Leah Solo, Executive Director
Nursing Home Workforce Standards Board
443 Lafayette Rd. N., St. Paul
MN 55155

Reference: Comment to Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 – 5200.2050, Revisor's ID Number R-04870

Dear Executive Director Solo:

Thank you for the opportunity to comment on the proposed holiday pay proposed rule. I respectfully urge the Nursing Home Workforce Standards Board (the Board) to reconsider this misguided standard and rule.

To be clear, Parkview Manor has always supported our workers and their ability to earn a life-sustaining wage. However: it is the responsibility and obligation of our state's elected officials to fund these investments. That is why nursing homes like mine have called for funding to raise wages year after year. Specifically, during this past legislative session, HF3391/SF4130 would have provided funding to nursing homes for employee compensation via a rate increase, and at higher compensation levels than proposed by the Board. To my surprise and disappointment, this appropriation was not passed into law.

Absent leadership and support from the Legislative and Executive Branches, this proposed rule is an unfunded mandate that forces providers like me to afford these paid holidays and their wage rates by deferring funding to other needs that are critical to providing quality care for the seniors we serve.

The Board fails to consider, or worse ignores, critical facts and impacts in the development of these standards and moving forward with the standards as proposed could recklessly put the access of essential nursing home care in jeopardy for communities all over Minnesota. First, Minnesota is and will continue to experience a decline in workers[1]. Additionally, the Board has completely ignored the financial impacts to providers, including the limitations of state funding for nursing homes, such as a nearly 2-year delay in the recognition of new costs and the additional restrictions created by our rate equalization law. Most disappointingly and critically, the Board's standard fails to guarantee access to quality care for Minnesota's seniors and is likely to decrease access to services available to our state's older adults.

[1] Minnesota State Demographer, 2016. https://mn.gov/admin/assets/demographic-considerations-planning-for-mn-leaders-msdc-march2016_tcm36-219453.pdf

[redacted] [redacted]

I want to focus my concerns about the proposed holiday pay standard on the following:

Unfunded Mandate

The statute establishing this Board and the creation of standards also made clear that new standards should be funded with adequate funding before becoming effective. If the Board is going to require providers to pay time and a half for additional holidays, then lawmakers must take steps to fund the increased wage costs upfront and before the standard can take effect. Nursing homes cannot shoulder the burden these standards alone, especially when the state and federal governments are responsible for providing the funds to them.

Financial Challenges

In a time of record wage inflation and market competition for workers, we cannot compete with retail, food service, or other industries, particularly given the unique role that our state and federal government partners have in supporting wages through Medicare and Medicaid. The Board is asking nursing homes to do the impossible – pay staff more without any additional funding.

The Medicaid and CHIP Payment and Access Commission has reported that current basic Medicaid rates only cover 86% of nursing home costs.[2] We must ensure nursing homes are reimbursed for the true cost of the care they provide.

Implementation Challenges

The effective date of January 1, 2025, for this rule is very problematic for our organization. In addition to the cost of adding new holidays, we currently offer some paid holidays that are not official state holidays. Based on the expected timeline for approval of this rule, we will have less than two months to receive feedback from employees and implement a new holiday schedule for 2025. Once that is done, we will have to adjust payroll practices and scheduling policies to implement the new holiday schedule. The Board's unwillingness to consider a more realistic implementation date show that they do not understand provider operations and the challenges they face in implementing major changes in an unrealistic time frame.

Definition of Employee

The proposed rule needs to clearly define "employee" - FT, PT, PRN, those who work a minimum number of regularly scheduled hours/days, etc. - who will receive the benefit of the increased number of paid holidays. Requiring nursing homes to pay for all the holidays to all staff, including those who work a very limited number of hours, will place an undue financial burden on nursing homes especially if the rule goes into effect as an unfunded mandate.

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[2] Medicaid and CHIP Payment and Access Commission, (2023, January). Estimates of Medicaid Nursing Facility Payments Relative to Costs. https://www.macpac.gov/wp-content/uploads/2023/01/Estimates-of-Medicaid-Nursing-Facility-Payments-Relative-to-Costs-1-6-23.pdf

In summary, this proposed standard requires nursing homes to pay holiday wages that are not currently part of reimbursement rates, meaning in simple terms it is an unfunded mandate. Tying the hands of providers by forcing employees to accept specific holidays will not achieve its intended impact. Such impacts will be directly felt by residents, their families, and communities as a result. Accordingly, we are opposed to this entire rule and request its disposition be resolved during a public hearing.

Thank you for considering my comments and request for public hearing.

Sincerely,

Dennis J. DeJager, LNHA

From: Dennis Dejager
To: RULES, DLI (DLI)
Date: Friday, August 30, 2024 10:06:04 AM
Attachments: 20240830095556864.pdf

To Whom It May Concern

Please see the attached letter re: the proposed holiday pay rule. Thank you.

Dennis J. DeJager, LNHA
Parkview Manor Nursing Home
308 Sherman Avenue
Ellsworth, MN 56129
Ph: 507-967-2482 Ext. 101

From:	Anderson,Jason
To:	RULES, DLI (DLI)
Cc:	Anderson,Jason
Subject:	MN Workforce Standards Board - Comment Letter
Date:	Wednesday, September 25, 2024 3:18:49 PM
Attachments:	image001.jpg NHWSB_Holiday Comment Letter.pdf

Wednesday, September 25, 2024

Leah Solo, Executive Director

Nursing Home Workforce Standards Board

443 Lafayette Rd. N., St. Paul

MN 55155

Reference: Comment to Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 – 5200.2050, Revisor's ID Number R-04870

Dear Executive Director Solo:

I am the Administrator at Sanford Sylvan Court Skilled Nursing Facility, and I have the privilege to provide care for the aging population of a community in southwest Minnesota. I appreciate the opportunity to provide comments on the proposed rules governing holiday pay.

Sylvan Court is Sanford Canby Medical Center's long-term, Medicare-certified skilled nursing facility that is attached to a hospital and clinic. Sanford Canby Medical Center is a community-based 25-bed acute care Critical Access Hospital with an Emergency Department serving more than 6,000 people. Sanford Canby is located in Yellow Medicine County, southwestern Minnesota. In 2020, the population of Canby was recorded at 1695. The population of Yellow Medicine County was 9,528 in 2020 – with approximately 20.5% of residents being over the age of 65, more than the state average of 17.4%.

The staff at Sylvan Court are dedicated to providing residents with shared activities that develop closeness and create a caring and compassionate environment for residents. Sylvan Court is home to up to 48 elderly adults with various diagnoses – approximately 75% of whom have a dementia diagnosis of varying levels. We currently maintain a CMS 5-star status, have a history of low deficiency health surveys, and receive high scores on the resident and family satisfaction surveys.

We have always supported our workers and their ability to earn a life-sustaining wage. However: it is the responsibility and obligation of our state's elected officials to fund these investments. That is why nursing homes like mine have called for funding to raise wages year after year. Specifically, during this past legislative session, HF3391/SF4130 would have provided funding to nursing homes for employee compensation via a rate increase, and at higher compensation levels than proposed by the Board. To my surprise and disappointment,

this appropriation was not passed into law.
The Board fails to consider, or worse ignores, critical facts and impacts in the development of these standards and moving forward with the standards as proposed could recklessly put the access of essential nursing home care in jeopardy for communities like ours. The Board has completely ignored the financial impacts to providers, including the limitations of state funding for nursing homes, such as a nearly 2-year delay in the recognition of new costs and the additional restrictions created by our rate equalization law. Most disappointingly and critically, the Board’s standard fails to guarantee access to quality care for Minnesota’s seniors and is likely to decrease access to services available to our state’s older adults.
I want to focus on my serious concerns about the proposed holiday pay standard on the following areas:

- The mandated eleven state holidays are unfunded. Minnesota’s Medicaid nursing facility payment system uses a facility submitted cost report. After auditing, the Minnesota Department of Human Services (DHS) January establishes Medicaid Rates on January 1 that reflect costs incurred 15 to 27 months prior.
- We budget annually and these processes begin a full year in advance. The mandated state holidays are an unanticipated change and are an unplanned expenditure.
- The January 1, 2025 effective date allows little time to implement the mandated eleven holidays. Nursing facilities are open 24 hours a day, seven days a week, 365 days a year. Planning and scheduling holidays requires detailed planning. Employees value certain holidays more than others and this will change their holiday rotation and disrupt their family plans. Not to mention, the proposed rule will become administrative law a month before the effective date.
- Our nursing home is part of a campus which includes a home health and hospice agency, an assisted living facility, a rural health clinic and a critical access hospital and mentioned. These areas have many shared employees across a variety of departments. The proposed rule will create either employee dissatisfaction, additional expenditure and/or administrative burden for our organization when implementing this Minnesota specific mandate.

I oppose the proposed rule language and request a public hearing. Thank you for your consideration.

Jason Anderson, DPT, MBA-HC, LNHA, LALD
Administrator, LTC Services | Sanford Canby Medical Center-Sylvan Court and Place
Office (507) 223-7277 Ext 265
112 St Olaf Ave South, Canby, MN 56220

Wednesday, September 25, 2024

Leah Solo, Executive Director
Nursing Home Workforce Standards Board
443 Lafayette Rd. N., St. Paul
MN 55155

Reference: Comment to Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 – 5200.2050, Revisor's ID Number R-04870

Dear Executive Director Solo:

I am the Administrator at Sanford Sylvan Court Skilled Nursing Facility, and I have the privilege to provide care for the aging population of a community in southwest Minnesota. I appreciate the opportunity to provide comments on the proposed rules governing holiday pay.

Sylvan Court is Sanford Canby Medical Center's long-term, Medicare-certified skilled nursing facility that is attached to a hospital and clinic. Sanford Canby Medical Center is a community-based 25-bed acute care Critical Access Hospital with an Emergency Department serving more than 6,000 people. Sanford Canby is located in Yellow Medicine County, southwestern Minnesota. In 2020, the population of Canby was recorded at 1695. The population of Yellow Medicine County was 9,528 in 2020 – with approximately 20.5% of residents being over the age of 65, more than the state average of 17.4%.

The staff at Sylvan Court are dedicated to providing residents with shared activities that develop closeness and create a caring and compassionate environment for residents. Sylvan Court is home to up to 48 elderly adults with various diagnoses – approximately 75% of whom have a dementia diagnosis of varying levels. We currently maintain a CMS 5-star status, have a history of low deficiency health surveys, and receive high scores on the resident and family satisfaction surveys.

We have always supported our workers and their ability to earn a life-sustaining wage. However: it is the responsibility and obligation of our state's elected officials to fund these investments. That is why nursing homes like mine have called for funding to raise wages year after year. Specifically, during this past legislative session, HF3391/SF4130 would have provided funding to nursing homes for employee compensation via a rate increase, and at higher compensation levels than proposed by the Board. To my surprise and disappointment, this appropriation was not passed into law.

The Board fails to consider, or worse ignores, critical facts and impacts in the development of these standards and moving forward with the standards as proposed could recklessly put the access of essential nursing home care in jeopardy for communities like ours. The Board has completely ignored the financial impacts to providers, including the limitations of state funding for nursing homes, such as a nearly 2-year delay in the recognition of new costs and the additional restrictions created by our rate equalization law. Most disappointingly and critically, the Board's standard fails to guarantee access to quality care for Minnesota's seniors and is likely to decrease access to services available to our state's older adults.

I want to focus on my serious concerns about the proposed holiday pay standard on the following areas:

- The mandated eleven state holidays are unfunded. Minnesota's Medicaid nursing facility payment system uses a facility submitted cost report. After auditing, the Minnesota Department of Human Services (DHS) January establishes Medicaid Rates on January 1 that reflect costs incurred 15 to 27 months prior.
- We budget annually and these processes begin a full year in advance. The mandated state holidays are an unanticipated change and are an unplanned expenditure.
- The January 1, 2025 effective date allows little time to implement the mandated eleven holidays. Nursing facilities are open 24 hours a day, seven days a week, 365 days a year. Planning and scheduling holidays requires detailed planning. Employees value certain holidays more than others and this will change their holiday rotation and disrupt their family plans. Not to mention, the proposed rule will become administrative law a month before the effective date.
- Our nursing home is part of a campus which includes a home health and hospice agency, an assisted living facility, a rural health clinic and a critical access hospital and mentioned. These areas have many shared employees across a variety of departments. The proposed rule will create either employee dissatisfaction, additional expenditure and/or administrative burden for our organization when implementing this Minnesota specific mandate.

I oppose the proposed rule language and request a public hearing. Thank you for your consideration.

Jason Anderson
LTC Director
Sanford Canby

From: Elizabeth Letich
To: RULES, DLI (DLI)
Subject: Part 5200.2000 – 5200.2050, Revisor’s ID Number R-04870 Comment
Date: Wednesday, September 4, 2024 3:48:09 PM
Attachments: Outlook-mvwewelz.png
WFS Board Response 9.4.24.docx

To Leah Solo, Executive Director of the Nursing Home Workforce Standards Board

Elizabeth Letich, LNHA, LALD
Regional Director - Southeast
(612) 206-7163
Elizabeth.letich@sfhs.org

801 Nevada Avenue
Morris MN 56267

Submitted Electronically
9/4/2024

Leah Solo, Executive Director
Nursing Home Workforce Standards Board
443 Lafayette Rd. N., St. Paul
MN 55155

Reference: Comment to Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 – 5200.2050, Revisor's ID Number R-04870

Dear Executive Director Solo,

Thank you for the opportunity to comment on the proposed holiday pay rule. I respectfully urge the Nursing Home Workforce Standards Board (the Board) to reconsider this mandate, as it poses significant challenges to nursing homes across Minnesota, especially as it remains an unfunded obligation.

To begin, I am employed with **St. Francis Health Services, a company that has been providing care to the elderly since 1963. The company has survived many challenges since its origin but none that has affected our finances as great as the last 4 years. In my 21 years of being with this company, we have** always supported the fair compensation of our employees, and we recognize the importance of a sustainable wage.

But it is now the duty of our elected officials to ensure that any new financial burdens placed on healthcare providers, such as this holiday pay standard, are accompanied by proper funding. Nursing homes, which already face considerable financial pressures, **<u>cannot</u>** absorb these costs without support. Despite our advocacy for wage increases in the past legislative session through HF3391/SF4130, the proposed funding for employee compensation was not approved, leaving us in a dire position.

The holiday pay rule will require nursing homes to designate eleven holidays (we currently designate 7) where employees must be paid time and a half. While the option to substitute four holidays with employee consent is allowed, the reality of implementing this in a short timeframe, with the rule likely only approved by November 2024 and effective January 1, 2025, creates immense logistical and financial strain. This rule was developed without fully considering its impact on nursing homes, particularly those already operating with thin margins in a labor market that continues to shrink.

Unfunded Mandate:
This rule represents a significant unfunded mandate. If nursing homes are required to implement time and a half pay for these holidays, there must be corresponding funding allocated. For example, this would mean an additional **$368,470** in holiday pay costs for 2025 for the three facilities I oversee: Farmington Health Services, Three Links Health Services & Zumbrota Health Services. Given the constraints we already face, these costs would force us to make difficult decisions about cutting back on other critical expenses—jeopardizing the quality of care we provide to our residents and a health work environment for our staff.

Financial Challenges:
Our facility, like many others in Minnesota, cannot simply adjust our rates to account for this increase in labor costs. Unlike businesses in other sectors, **we are bound by Medicaid, Medicare, and private pay rates that are determined well in advance and do not account for new mandates.** The Medicaid and CHIP Payment and Access Commission has reported that Medicaid only covers 86% of nursing home

costs, leaving us at a financial disadvantage even before this new rule. Without state funding to support this increase, nursing homes may be forced to close their doors or reduce services, further limiting access to essential care for Minnesota's elderly population.

Operational and Implementation Challenges:
The timeline for implementation is highly problematic. Our organization would have less than two months to finalize a holiday schedule for 2025, requiring employee approval and major adjustments to payroll and scheduling. The Board's approach does not consider the practical realities of running a nursing home. Additionally, we already offer holidays such as New Years, Easter, Memorial, Independence and Labor Day, Thanksgiving and Christmas, and adjusting these in accordance with the state holiday schedule will cause confusion and additional strain on our operations.

Impact on Care Access:
Ultimately, this rule places the financial burden on nursing homes without ensuring that our seniors will continue to receive the care they need. Many facilities, particularly those in rural areas like ours, are already struggling with staffing shortages and rising costs. Adding these holiday pay requirements without the necessary funding will put us in an impossible position, forcing us to make difficult choices that may include reducing services, limiting admissions, or in the worst-case scenario, closing our doors altogether.

I respectfully ask that the Board reconsider the holiday pay rule and work with the Legislature to secure adequate funding before imposing any new financial requirements on nursing homes. Without this support, the proposed rule will do more harm than good, particularly to the vulnerable populations we serve.

Thank you for considering my comments. I also request that a public hearing be held to further discuss this matter and its far-reaching consequences.

Sincerely,

Elizabeth Letich, Regional Director SE
St. Francis Health Services of Morris
Elizabeth.letich@sfhs.org
612.206.7163

Becerra, Linnea (She/Her/Hers) (DLI)

From:	Crystal Ellefson <director@stmarksliving.org>
Sent:	Wednesday, September 18, 2024 11:58 AM
To:	RULES, DLI (DLI)
Subject:	• Attention: Leah Solo at the Department of Labor and Industry, 443 Lafayette Rd. N., St. Paul, MN 55155
Attachments:	NHWSB Comment Letter Holiday-CWO-Posting Requirements.docx

Please see the attached documentation for the draft of the proposed rule. Thank you for your time in this crucial matter.

Crystal Ellefson, LNHA
400 15th Ave. SW
Austin, MN 55912
Direct: 507-434-7216
Main: 507-437-4594
director@stmarksliving.org
St. Mark's Living
LOVE. HONOR. COMPASSION.

Date: September 27, 2024

OAH Docket Number: 28-9001-40213

Presiding Judge: Administrative Law Judge Joseph Meyer

Comment Period: August 26, 2024 through 4:30 p.m. on September 25, 2024

Re: Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 - 5200.2050.

I am the Executive Director at St. Mark's Living.

We provide services for the aging population in Austin, MN. We have short and long stay skilled nursing facility, assisted living and independent apartments. We were started by a group of churches in the community and have great support from Austin and greater area.

The proposed rule mandates that a nursing home employee who works any of the specified eleven holidays is paid a minimum of time-and-one-half their regular hourly wage for all hours worked during the holiday. I oppose the proposed rule language and request a public hearing.

- The mandated eleven state holidays are unfunded. Minnesota's Medicaid nursing facility payment system uses a facility submitted cost report. After auditing, the Minnesota Department of Human Services (DHS) January establishes Medicaid Rates on January 1 that reflect costs incurred 15 to 27 months prior. With an added minimum cost per year of $30,000.00 for just the skilled nursing facility.

- Nursing facilities engage in annual budgeting processes that begin a full year in advance. The mandated state holidays are an unanticipated change and are an unplanned expenditure, which puts an und0 hardship on an already burdened industry.

- The January 1, 2025 effective date allows little time to implement the mandated eleven holidays. Nursing facilities are open 24 hours a day, seven days a week, 365 days a year. Planning and scheduling holidays requires detailed planning. Employees value certain holidays more than others. Employees also understand the inherent trade-offs of wanting to take Easter off will mean working on July 4. The proposed rule will become administrative law a month before the effective date. This is not enough time to ensure that all voices are heard, and proper survey results received. This campus also, has two union contracts which will also have to be negotiated for these new requirements. To be just and fair to all this would not give enough time to be able to have sit down negotiation with both unions.

- We also operate licensed an assisted living facility *(home health, hospice agencies, and hospitals)* on our campus. Assisted living staff may not work at a nursing facility but they are employees of our organization. The proposed rule will create either additional expenditure and/or administrative burden for our organization when implementing this Minnesota specific mandate. The majority of employees on this campus belong to 1 of 2 unions. All employees must have the same written contract.

- Our nursing facility currently contracts with vendors for (housekeeping, laundry, dietary etc.). It is not clear if these standards apply to the contracted employees, if our contracts need to be opened, or if this is interfering with our vendor contracts. We are concerned that the January 1, 2025 effective date and lack of funding will make this unworkable.

Thank you for your consideration.

Sincerely,
Crystal Ellefson, Executive Director, St. Mark's Living

THE ESTATES
AT GREELEY

September 25, 2024

VIA EMAIL ONLY

Minnesota Department of Labor and Industry
Attn: Leah Solo
443 Lafayette Road North
Saint Paul, Minnesota 55155
dli.rules@state.mn.us

Re: Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 - 5200.2050
OAH Docket No. 28-9001-40213

Dear Honorable Judge Joseph Meyer:

I am writing as the Administrator of The Estates at Greeley, a skilled nursing facility located in Stillwater, MN. Our facility proudly employs 70 individuals, and we also contract with vendors and agency staff when necessary to provide critical care to vulnerable populations, including elderly residents who depend on our services for daily living and medical support. Due to the nature of our operations, we encounter unique challenges in staffing and budgeting.

We oppose the proposed rule mandating that nursing home employees receive time-and-one-half pay for all hours worked during the eleven specified holidays, as we believe it will have several unintended consequences that will adversely impact both our facility and the people we serve.

1. **Financial Challenges**

In the current landscape of record wage inflation and heightened competition for workers, our facilities face significant financial challenges that hinder our ability to attract and retain qualified staff. Competing industries, such as retail and food service, often offer higher wages and more flexible working conditions, which makes it increasingly difficult for us to fill essential positions. The unique role that our state and federal government partners play in supporting wages through Medicare and Medicaid complicates this issue further.

The Board's proposal to mandate higher pay for staff without providing additional funding places an untenable burden on nursing homes. We are being asked to meet the expectations of improved worker compensation while grappling with the financial realities of our operational budgets. The Medicaid and CHIP Payment and Access Commission has reported that current basic Medicaid rates only cover approximately 86% of nursing home costs. This existing shortfall means that many facilities are already operating at a financial disadvantage, struggling to cover the true costs of the care we provide.

To maintain the quality of care that our residents deserve, it is imperative that nursing homes receive reimbursement that accurately reflects the actual costs of delivering services. Without this essential support, the proposed rule could exacerbate existing financial strain, forcing facilities to make difficult decisions that ultimately impact the quality of care and services available to our vulnerable populations. We urge the Board to recognize these financial challenges and provide the necessary funding to support fair employee compensation while ensuring the sustainability of nursing home operations.

2. Staffing and Schedule Changes

Skilled nursing facilities operate around the clock, 365 days a year. Scheduling staff for holidays is a delicate process that often requires careful negotiation, as employees have different preferences for which holidays they value. The proposed rule mandating time-and-a-half pay for all hours worked during the 11 specified holidays would significantly reduce this scheduling flexibility, making it more challenging to meet staffing needs while accommodating employee preferences.

While the intent of higher holiday pay is to benefit employees, the uneven distribution of holiday shifts—driven by seniority and individual preferences—could lead to resentment among staff. Some employees may not prioritize certain holidays, while others might feel compelled to work on days that are significant to them. This imbalance could harm employee morale over time, leading to increased turnover, especially if staff feel pressured to work undesirable shifts despite the additional pay.

The lack of flexibility in scheduling, coupled with the potential for conflict among staff regarding holiday assignments, may also strain labor relationships and disrupt the cooperative environment that is vital to our operations. With our already limited resources and the complexities introduced by this rule, maintaining a positive workplace culture while ensuring adequate staffing levels during the holidays could become increasingly challenging. Ultimately, these staffing and scheduling challenges could further jeopardize the quality of care we provide to our residents, undermining our mission to support the vulnerable populations who depend on our services.

3. Vendor and Contracting Issues

Additionally, our facilities rely on outside vendors for critical services such as housekeeping, laundry, and dietary support. The proposed rule raises significant uncertainty regarding whether contract employees would be subject to the same holiday pay requirements. If these vendors are required to comply with the new rules, it would necessitate reopening and renegotiating existing vendor contracts, adding yet another layer of complexity and strain to our operations.

The potential for increased costs associated with vendor compliance could further exacerbate the financial challenges we face, especially given our tight margins in rural areas where we operate. These renegotiations would not only consume valuable administrative resources but could also lead to disruptions in services during a time when stability is crucial for the well-being of our residents.

The necessity to navigate these contracting issues could distract our management teams from focusing on providing quality care and supporting our staff. As we strive to maintain the highest standards of service for our vulnerable populations, these additional burdens could compromise our mission and impact our ability to deliver essential services effectively.

4. Implementation Challenges

The January 1, 2025, effective date for this rule poses significant challenges for our organization. In addition to the financial implications of adding new holidays, we currently offer several paid holidays that are not recognized as official state holidays. Given the anticipated timeline for the approval of this rule, we will have less than two months to gather feedback from employees and establish a new holiday schedule for 2025.

Following this initial adjustment, we will face the daunting task of revising our payroll practices and scheduling policies to align with the new holiday schedule. The compressed timeline presents a substantial operational hurdle, as effective implementation will require careful coordination among various departments, including human resources and finance.

The Board's reluctance to consider a more realistic implementation date demonstrates a lack of understanding of provider operations and the complexities involved in executing significant changes within such a tight timeframe. To ensure a smooth transition and minimize disruption to our services, we respectfully urge the Board to reassess the implementation date, allowing sufficient time for facilities to prepare adequately. Without this consideration, the successful rollout of the new requirements may be severely compromised, ultimately affecting the quality of care we provide for our residents.

Thank you for your time and consideration.

Sincerely,

Ross Rivard
Administrator
The Estates at Greeley
651-235-4386

From: Ross Rivard
To: RULES, DLI (DLI)
Subject: Proposed Governing Holiday Pay
Date: Tuesday, September 24, 2024 8:23:37 AM
Attachments: Outlook-4p3shpya.png
DHS.pdf

Ross Rivard
Administrator, LNHA

The Estates at Greeley
313 Greeley Street S.
Stillwater, MN, 55082

Ph: 651-235-4386

WWW.MONARCHMN.COM

From: Laura Steffen
To: RULES, DLI (DLI)
Subject: Minnesota Nursing Home Workforce Standards Board (NHWSB) Public Comment
Date: Wednesday, September 25, 2024 1:31:34 PM
Attachments: Outlook-mdq145ij.png
Proposed Rule Holiday Pay.pdf

Please see attached public comment from The Estates at Linden regarding NHWBS Final Rule

Laura Steffen

Administrator, LNHA
The Estates at Linden
105 W. Linden St.
Stillwater, MN, 55082
P: 651-439-5004
F: 651-439-5847
www.monarchmn.com

The Estates at Linden

September 25, 2024

Minnesota Department of Labor and Industry
Attn: Leah Solo
443 Lafayette Road North
Saint Paul, Minnesota 55155
dli.rules@state.mn.us

Re: Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 - 5200.2050
OAH Docket No. 28-9001-40213

Dear Honorable Judge Joseph Meyer:

I am writing as the Administrator of The Estates at Linden a skilled nursing facility located in Stillwater, MN Our facility proudly employs 36 individuals, and we also contract with vendors and agency staff when necessary to provide critical care to vulnerable populations, including elderly residents who depend on our services for daily living and medical support. Due to the nature of our operations, we encounter unique challenges in staffing and budgeting.

We oppose the proposed rule mandating that nursing home employees receive time-and-one-half pay for all hours worked during the eleven specified holidays, as we believe it will have several unintended consequences that will adversely impact both our facility and the people we serve.

1. **Financial Challenges**

In the current landscape of record wage inflation and heightened competition for workers, our facilities face significant financial challenges that hinder our ability to attract and retain qualified staff. Competing industries, such as retail and food service, often offer higher wages and more flexible working conditions, which makes it increasingly difficult for us to fill essential positions. The unique role that our state and federal government partners play in supporting wages through Medicare and Medicaid complicates this issue further.

The Board's proposal to mandate higher pay for staff without providing additional funding places an untenable burden on nursing homes. We are being asked to meet the expectations of improved worker compensation while grappling with the financial realities of our operational budgets. The Medicaid and CHIP Payment and Access Commission has reported that current basic Medicaid rates only cover approximately 86% of nursing home costs. This existing shortfall means that many facilities are already operating at a financial disadvantage, struggling to cover the true costs of the care we provide.
To maintain the quality of care that our residents deserve, it is imperative that nursing homes receive reimbursement that accurately reflects the actual costs of delivering services. Without

this essential support, the proposed rule could exacerbate existing financial strain, forcing facilities to make difficult decisions that ultimately impact the quality of care and services available to our vulnerable populations. We urge the Board to recognize these financial challenges and provide the necessary funding to support fair employee compensation while ensuring the sustainability of nursing home operations.

2. Staffing and Schedule Changes

Skilled nursing facilities operate around the clock, 365 days a year. Scheduling staff for holidays is a delicate process that often requires careful negotiation, as employees have different preferences for which holidays they value. The proposed rule mandating time-and-a-half pay for all hours worked during the 11 specified holidays would significantly reduce this scheduling flexibility, making it more challenging to meet staffing needs while accommodating employee preferences.

While the intent of higher holiday pay is to benefit employees, the uneven distribution of holiday shifts—driven by seniority and individual preferences—could lead to resentment among staff. Some employees may not prioritize certain holidays, while others might feel compelled to work on days that are significant to them. This imbalance could harm employee morale over time, leading to increased turnover, especially if staff feel pressured to work undesirable shifts despite the additional pay.

The lack of flexibility in scheduling, coupled with the potential for conflict among staff regarding holiday assignments, may also strain labor relationships and disrupt the cooperative environment that is vital to our operations. With our already limited resources and the complexities introduced by this rule, maintaining a positive workplace culture while ensuring adequate staffing levels during the holidays could become increasingly challenging. Ultimately, these staffing and scheduling challenges could further jeopardize the quality of care we provide to our residents, undermining our mission to support the vulnerable populations who depend on our services.

3. Vendor and Contracting Issues

Additionally, our facilities rely on outside vendors for critical services such as housekeeping, laundry, and dietary support. The proposed rule raises significant uncertainty regarding whether contract employees would be subject to the same holiday pay requirements. If these vendors are required to comply with the new rules, it would necessitate reopening and renegotiating existing vendor contracts, adding yet another layer of complexity and strain to our operations.

The potential for increased costs associated with vendor compliance could further exacerbate the financial challenges we face, especially given our tight margins related to caring for high percentages of Medicaid recipients. These renegotiations would not only consume valuable administrative resources but could also lead to disruptions in services during a time when stability is crucial for the well-being of our residents.

The necessity to navigate these contracting issues could distract our management teams from focusing on providing quality care and supporting our staff. As we strive to maintain the highest standards of service for our vulnerable populations, these additional burdens could compromise our mission and impact our ability to deliver essential services effectively.

4. **Implementation Challenges**

The January 1, 2025, effective date for this rule poses significant challenges for our organization. In addition to the financial implications of adding new holidays, we currently offer several paid holidays that are not recognized as official state holidays. Given the anticipated timeline for the approval of this rule, we will have less than two months to gather feedback from employees and establish a new holiday schedule for 2025.

Following this initial adjustment, we will face the daunting task of revising our payroll practices and scheduling policies to align with the new holiday schedule. The compressed timeline presents a substantial operational hurdle, as effective implementation will require careful coordination among various departments, including human resources and finance.

The Board's reluctance to consider a more realistic implementation date demonstrates a lack of understanding of provider operations and the complexities involved in executing significant changes within such a tight timeframe. To ensure a smooth transition and minimize disruption to our services, we respectfully urge the Board to reassess the implementation date, allowing sufficient time for facilities to prepare adequately. Without this consideration, the successful rollout of the new requirements may be severely compromised, ultimately affecting the quality of care we provide to our residents.

Thank you for your time and consideration.

Sincerely,

Laura Steffen
Administrator
The Estates at Linden
651-439-5004
LSteffen@MonarchMN.com

From: Claire Bauernfeind <CBauernfeind@MonarchMN.com>
Sent: Friday, September 20, 2024 9:14 AM
To: RULES, DLI (DLI)
Subject: Attn: Leah Solo at the Department of Labor and Industry
Attachments: Holiday Rule Change Letter.docx

Good morning,

Please see attached letter in reference to changes from the Minnesota Nursing Home Workforce Standards Board.\

Thank you,

Claire Bauernfeind, LNHA
Interim Administrator

The Estates at St. Louis Park
3201 Virginia Ave S
St. Louis Park, MN 55426
P: (952)- 935-0333 ext. 125
www.monarchmn.com

THE ESTATES
AT ST. LOUIS PARK

September 20, 2024

VIA EMAIL ONLY

Minnesota Department of Labor and Industry
Attn: Leah Solo
443 Lafayette Road North
Saint Paul, Minnesota 55155
dli.rules@state.mn.us

Re: Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 - 5200.2050
OAH Docket No. 28-9001-40213

Dear Honorable Judge Joseph Meyer:

I am writing as the Administrator of The Estates at St. Louis Park, a skilled nursing facility located in St. Louis Park. Our facility proudly employs 125 individuals, and we also contract with vendors and agency staff when necessary to provide critical care to vulnerable populations, including elderly residents who depend on our services for daily living and medical support. Due to the nature of our operations, we encounter unique challenges in staffing and budgeting.

We oppose the proposed rule mandating that nursing home employees receive time-and-one-half pay for all hours worked during the eleven specified holidays, as we believe it will have several unintended consequences that will adversely impact both our facility and the people we serve.

1. **Financial Challenges**

In the current landscape of record wage inflation and heightened competition for workers, our facilities face significant financial challenges that hinder our ability to attract and retain qualified staff. Competing industries, such as retail and food service, often offer higher wages and more flexible working conditions, which makes it increasingly difficult for us to fill essential positions. The unique role that our state and federal government partners play in supporting wages through Medicare and Medicaid complicates this issue further.

The Board's proposal to mandate higher pay for staff without providing additional funding places an untenable burden on nursing homes. We are being asked to meet the expectations of improved worker compensation while grappling with the financial realities of our operational budgets. The Medicaid and CHIP Payment and Access Commission has reported that current basic Medicaid rates only cover approximately 86% of nursing home costs. This existing shortfall means that many facilities are already operating at a financial disadvantage, struggling to cover the true costs of the care we provide.
To maintain the quality of care that our residents deserve, it is imperative that nursing homes receive reimbursement that accurately reflects the actual costs of delivering services. Without this essential support, the proposed rule could exacerbate existing financial strain, forcing facilities to make difficult decisions that ultimately impact the quality of care and services available to our vulnerable populations. We urge the Board to recognize these financial challenges and provide the necessary funding to support fair employee compensation while ensuring the sustainability of nursing home operations.

2. **Staffing and Schedule Changes**

Skilled nursing facilities operate around the clock, 365 days a year. Scheduling staff for holidays is a delicate process that often requires careful negotiation, as employees have different preferences for which holidays they value. The proposed rule mandating time-and-a-half pay for all hours worked during the 11 specified holidays would significantly reduce this scheduling flexibility, making it more challenging to meet staffing needs while accommodating employee preferences.

While the intent of higher holiday pay is to benefit employees, the uneven distribution of holiday shifts—driven by seniority and individual preferences—could lead to resentment among staff. Some employees may not prioritize certain holidays, while others might feel compelled to work on days that are significant to them. This imbalance could harm employee morale over time, leading to increased turnover, especially if staff feel pressured to work undesirable shifts despite the additional pay.

The lack of flexibility in scheduling, coupled with the potential for conflict among staff regarding holiday assignments, may also strain labor relationships and disrupt the cooperative environment that is vital to our operations. With our already limited resources and the complexities introduced by this rule, maintaining a positive workplace culture while ensuring adequate staffing levels during the holidays could become increasingly challenging. Ultimately, these staffing and scheduling challenges could further jeopardize the quality of care we provide to our residents, undermining our mission to support the vulnerable populations who depend on our services.

3. **Vendor and Contracting Issues**

Additionally, our facilities rely on outside vendors for critical services such as housekeeping, laundry, and dietary support. The proposed rule raises significant uncertainty regarding whether contract employees would be subject to the same holiday pay requirements. If these vendors are required to comply with the new rules, it would necessitate reopening and renegotiating existing vendor contracts, adding yet another layer of complexity and strain to our operations.

The potential for increased costs associated with vendor compliance could further exacerbate the financial challenges we face. These renegotiations would not only consume valuable administrative resources but could also lead to disruptions in services during a time when stability is crucial for the well-being of our residents.

The necessity to navigate these contracting issues could detract our management teams from focusing on providing quality care and supporting our staff. As we strive to maintain the highest standards of service for our vulnerable populations, these additional burdens could compromise our mission and impact our ability to deliver essential services effectively.

4. **Implementation Challenges**

The January 1, 2025, effective date for this rule poses significant challenges for our organization. In addition to the financial implications of adding new holidays, we currently offer several paid holidays that are not recognized as official state holidays. Given the anticipated timeline for the approval of this rule, we will have less than two months to gather feedback from employees and establish a new holiday schedule for 2025.

Following this initial adjustment, we will face the daunting task of revising our payroll practices and scheduling policies to align with the new holiday schedule. The compressed timeline presents a substantial operational hurdle, as effective implementation will require careful coordination among various departments, including human resources and finance.

The Board's reluctance to consider a more realistic implementation date demonstrates a lack of understanding of provider operations and the complexities involved in executing significant changes within such a tight timeframe. To ensure a smooth transition and minimize disruption to our services, we respectfully urge the Board to reassess the implementation date, allowing

THE ESTATES
AT ST. LOUIS PARK

sufficient time for facilities to prepare adequately. Without this consideration, the successful rollout of the new requirements may be severely compromised, ultimately affecting the quality of care we provide to our residents.

Thank you for your time and consideration.

Sincerely,

Claire Bauernfeind, LNHA
Administrator
The Estates at St. Louis Park
952-935-0333 ext 125

September 25, 2024

OAH Docket Number: 28-9001-40213
Presiding Judge: Administrative Law Judge Joseph Meyer
Re: Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 - 5200.2050.

Dear Judge Joseph Meyer,

My name is Nathan Schema, and I am the President and CEO of The Evangelical Lutheran Good Samaritan Society, the nation's largest nonprofit provider of skilled nursing services. We are privileged to serve thousands of Minnesota's seniors in 23 communities across the state in our skilled nursing locations. We also provide assisted and independent living services, rehabilitation therapy and home- and community-based services. The work we do in Minnesota is especially personal to me. It's where I grew up and trained to become a nursing home administrator. I have many family members who have worked in health care in the state and others who have been on the receiving end of care. It's truly an honor to help support the needs of older adults in Minnesota.

Our skilled nursing centers are located predominantly in rural areas:

- Albert Lea
- Austin
- Battle Lake
- Bemidji
- Brainerd (2)
- Blackduck
- Canby
- Howard Lake
- International Falls
- Inver Grove Heights
- Jackson
- Maplewood
- New Hope
- Pine River
- Pipestone
- Robbinsdale
- St. James
- Stillwater
- Waconia
- Westbrook
- Windom
- Luverne

In these rural communities with populations of 500 to 5,000, we often have the only skilled nursing center in town, and the residents we serve are retired teachers, farmers, pastors, business owners and veterans. As a nonprofit provider with more than 70% of our residents living in rural areas, we wake up every day asking ourselves how we can solve the unique challenges of rural health care delivery so we can protect access to care. Unfortunately, access has been strained across the state in the last few years, which means Minnesotans must move further away from home to receive skilled nursing care. As an example, our location in Howard Lake is an hour outside the Twin Cities. Our team consistently receives calls from hospitals in the metro that are struggling to find placement for patients. We accept as many of these patients as we can, but that means the patients are moving an hour away from home to receive the care they need.

The proposed rule mandates that a nursing home employee who works any of the specified eleven holidays is paid a minimum of time-and-one-half their regular hourly wage for all hours worked during the holiday. Considering the widespread and long-term implications of the rule on seniors, nursing homes and the health care sector, we request a public hearing to ensure all voices can express input on this decision.

These are our greatest concerns with the proposed rule language:

The January 1, 2025, effective date allows little time to implement the mandated eleven holidays. Nursing facilities are open 24 hours a day, seven days a week, 365 days a year. Scheduling holidays requires detailed planning. Employees value certain holidays more than others. The proposed rule will become administrative law a month before the effective date.

There will be minimal time to make necessary changes to employee handbooks and outline the differences between our traditional holidays and the additional ones that will provide time-and-one-half their regular hourly wage for all hours worked during the additional mandated state holidays. There will be no time available to negotiate any changes required in employee bargaining units.

The mandated eleven state holidays are unfunded. Minnesota's Medicaid nursing facility payment system uses a facility submitted cost report. After auditing, the Minnesota Department of Human Services (DHS) January establishes Medicaid Rates on January 1 that reflect costs incurred 15 to 27 months prior.

A conservative estimate of the time-and-one-half payments for direct care staff within our organization is over $255,000 per year and that does not take into consideration any of our other staff also working those days who will also expect this payment if others are receiving it.

Nursing facilities engage in annual budgeting processes that begin a full year in advance. The mandated state holidays are an unanticipated change and are an unplanned expenditure. Our local leaders will be making difficult decisions about how to reduce costs in other areas through reduced services and programing to balance their budgets, especially with the concerns of rate caps potentially being impacted.

We also operate assisted living facilities, independent living facilities, and home health and hospice agencies on our campuses, along with hospitals in our communities. On many of our campuses staff work in multiple services including at our nursing facility. The proposed rule will create additional administrative burden for local leaders. It will also cause confusion for employees when only those working in the nursing facility receive the additional pay for these additional holidays. Otherwise, it creates another unfunded expense to other important community services if providers extend this new nursing facility mandate to other settings and services that will impact overall state Medicaid expenditures eventually.

Some of our nursing facilities currently contract with vendors for dietary. It is not clear if these standards apply to the contracted employees, if our contracts need to be opened, or if this is interfering with our vendor contracts. We are concerned that the January 1, 2025 effective date, and lack of funding will make this unworkable.

Thank you for your consideration.

Nathan Schema
President & CEO
The Evangelical Lutheran Good Samaritan Society

From: Schema,Nathan
To: RULES, DLI (DLI)
Subject: Comment Letter
Date: Wednesday, September 25, 2024 4:26:03 PM
Attachments: image001.png
Comment Letter - Proposed Holiday Pay-CWO-Posting Requirements MN Rule - Nathan Schema.pdf

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This message may be from an external email source.

Do not select links or open attachments unless verified. Report all suspicious emails to Minnesota IT Services Security Operations Center.

Ms. Solo

Please see the attached comment letter.

Thank you!

Nathan Schema

Good Samaritan – President & CEO

From:	Kim Te Brugge
To:	RULES, DLI (DLI)
Subject:	Mandatory Holiday Pay
Date:	Friday, September 20, 2024 3:55:00 PM
Attachments:	TGG_Email-Sig_Top150_2018_2019_2020_128-1_3a1ec494-d4ab-4c5e-8475-06185c4cba42111111111.png star-trib-final_76501ad1-f50d-41d6-884e-7acbee521d151.png Estimate Annual Cost of Mandated Holidays v1.xlsx NHWSB_CommentLetterHolidayCWOPostingRequirements.docx

Good Afternoon Leah

Attached you will find both a comment letter as it pertains to the impact to our Skilled Community – St. Anthony Health & Rehabilitation. I thank you in advance for your time and consideration.

KIM TE BRUGGE
VICE PRESIDENT OF SENIOR LIVING & HEALTH CARE

1107 Hazeltine Boulevard, Suite 200, Chaska, MN 55318
PHONE (952) 361-8087 **CELL** (727) 420-7656 **FAX** (952) 361-8010
EMAIL kim.tebrugge@thegoodmangroup.com

thegoodmangroup.com | Like us on **Facebook**

Estimate Annual Cost of Mandated Holiday Pay of Time and One Half	Select (Drop-Down)
Number of Holidays where your nursing facility pays minimum of time-and-one-half of employees regular hourly wage for all hours worked during the holiday.	6
Eleven Mandated State Holidays	11
Number of Additional Holidays for your nursing facility due to Proposed Rule	5
Estimated Statewide Average Daily Compensated Hours (DHS)	371.9
Estimated Statewide Average Hourly Wage (DHS)	$24.10
Taxes and Benefits	11.33%
Estimated Statewide Average Hourly Wage (DHS) including Taxes and Benefits	$26.83
Estimated Annual Cost of Mandated Holidays for Your Nursing Facility	**$24,946**

Estimate Annual Cost of Mandated Holiday Pay of Time and One Half	**Select (Drop-Down)**
Number of Holidays where your nursing facility pays minimum of time-and-one-half of employees regular hourly wage for all hours worked during the holiday.	
Eleven Mandated State Holidays	11
Number of Additional Holidays for your nursing facility due to Proposed Rule	
Enter your Nursing Facility's Average Daily Compensated Hours	
Enter your Nursing Facility's Average Hourly Wage	
Taxes and Benefits	11.33%
Estimated Statewide Average Hourly Wage (DHS) including Taxes and Benefits	$0.00
Estimated Annual Cost of Mandated Holidays for Your Nursing Facility	

Date: September 26, 2024

OAH Docket Number: 28-9001-40213

Presiding Judge: Administrative Law Judge Joseph Meyer

Comment Period: August 26, 2024 through 4:30 p.m. on September 25, 2024

Re: Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 - 5200.2050.

I am the Vice President of Senior Living & Health Care for The Goodman Group St. Anthony Health & Rehabilitation.

We are currently responsible for the care and services for skilled nursing home patients who are often classed as difficult to serve due to mental health diagnosis and complications.

The proposed rule mandates that a nursing home employee who works any of the specified eleven holidays is paid a minimum of time-and-one-half their regular hourly wage for all hours worked during the holiday. I oppose the proposed rule language and request a public hearing.

- The mandated eleven state holidays are unfunded. Minnesota's Medicaid nursing facility payment system uses a facility submitted cost report. After auditing, the Minnesota Department of Human Services (DHS) January establishes Medicaid Rates on January 1 that reflect costs incurred 15 to 27 months prior.
  Currently, this community is operating at a negative margin. The additional burden of the proposed rule only adds further insult to injury. Should this pass, we would need to evaluate the viability of continued operations. In addition, we have an assisted living community that resides on the same campus which will also be impacted. An increase in wages will ultimately the ALF and therefore the consumer whose rent will be impacted to help cover these increases.

- Nursing facilities engage in annual budgeting processes that begin a full year in advance. The mandated state holidays are an unanticipated change and are an unplanned expenditure.

- The January 1, 2025 effective date allows little time to implement the mandated eleven holidays. Nursing facilities are open 24 hours a day, seven days a week, 365 days a year. Planning and scheduling holidays requires detailed planning. Employees value certain holidays more than others. Employees also understand the inherent trade-offs of wanting to take Easter off will mean working on July 4. The proposed rule will become administrative law a month before the effective date.

- We also operate licensed an assisted living facility on our campus. Assisted living staff may not work at a nursing facility but they are employees of our organization. The proposed rule will create either additional expenditure and/or administrative burden for our organization when implementing this Minnesota specific mandate.

- It will also see rental and care increases for our AL residents to help offset the costs of these increases.
- Our organization has nursing facilities in 6 other states The proposed rule will create either additional expenditure and administrative burden for our organization when implementing this Minnesota specific mandate that will ultimately cost our local community more in administrative expense.

As providers, we continue to be asked to do more with less. Reimbursement is not keeping ujp with the times. This has a negative impact on care and service and overall morale of a community. We are in full support of fair wages and benefits for our community team members and currently provide that. It would be nice to see a more collaborative approach with stake holders when making decisions that ultimately impact organizations and put good communities at risk for closure which at the end of the day, benefits no one.

Thank you for your consideration.

Sincerely,
Kim Te Brugge
VP of Senior Living & Healthcare
The Goodman Group – Management Company for St. Anthony Health & Rehabilitation

From:	Chet Fishel
To:	RULES, DLI (DLI)
Subject:	Workforce Standards Board Holiday Letters
Date:	Monday, September 9, 2024 9:49:20 AM
Attachments:	image001.png WFS Board Response FHC.pdf WFS Board Response VHC.pdf

Dear Executive Director Solo,

Please find attached letters regarding the Holiday Pay Rule. I am submitting 2 letters, one for each of my care centers that I run in Duluth, MN.

Chester Fishel, RN LNHA LALD
Administrator

Viewcrest Health Center 218.279.4203
Franciscan Health Center 218.302.6988
Suncrest Assisted Living 218.878.1180
chet.fishel@sfhs.org

Submitted Electronically
09/09/2024

Leah Solo, Executive Director
Nursing Home Workforce Standards Board
443 Lafayette Rd. N., St. Paul
MN 55155

Reference: Comment to Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 – 5200.2050, Revisor's ID Number R-04870

Dear Executive Director Solo,

Thank you for the opportunity to comment on the proposed holiday pay rule. I am writing to respectfully urge the Nursing Home Workforce Standards Board (the Board) to reconsider this mandate, as it poses significant challenges to nursing homes across Minnesota, especially as it remains an unfunded obligation.

To begin, Viewcrest Health Center has always supported the fair compensation of our employees, and we recognize the importance of a sustainable wage. However, it is the duty of our elected officials to ensure that any new financial burdens placed on healthcare providers, such as this holiday pay standard, are accompanied by proper funding. Nursing homes, which already face considerable financial pressures, cannot absorb these costs without support. Despite our advocacy for wage increases in the past legislative session through HF3391/SF4130, the proposed funding for employee compensation was not approved, leaving us in a dire position.

The holiday pay rule will require nursing homes to designate eleven holidays where employees must be paid time and a half. While the option to substitute four holidays with employee consent is allowed, the reality of implementing this in a short timeframe, with the rule likely only approved by November 2024 and effective January 1, 2025, creates immense logistical and financial strain. This rule was developed without fully considering its impact on nursing homes, particularly those already operating with thin margins in a labor market that continues to shrink.

Unfunded Mandate:
This rule represents a significant unfunded mandate. If nursing homes are required to implement time and a half pay for these holidays, there must be corresponding funding allocated. For example, in our facility, this would mean an additional $48,936 in holiday pay costs for 2025. Given the constraints we already face, these costs would force us to make difficult decisions about cutting back on other critical expenses—jeopardizing the quality of care we provide to our residents.

Financial Challenges:
Our facility, like many others in Minnesota, cannot simply adjust our rates to account for this increase in labor costs. Unlike businesses in other sectors, we are bound by Medicaid, Medicare, and private pay rates that are determined well in advance and do not account for new mandates. The Medicaid and CHIP Payment and Access Commission has reported that Medicaid only covers 86% of nursing home costs, leaving us at a financial disadvantage even before this new rule. Without state funding to support this increase, nursing homes may be forced to close their doors or reduce services, further limiting access to essential care for Minnesota's elderly population.

Operational and Implementation Challenges:
The timeline for implementation is highly problematic. Our organization would have less than two months to finalize a holiday schedule for 2025, requiring employee approval and major adjustments to payroll and scheduling. The Board's approach does not take into account the practical realities of running a nursing home. Additionally, we already offer holidays such as New Years Day, Easter, Memorial Day, July 4th, Labor Day, Thanksgiving, and Christmas Day, and adjusting these in accordance with the state holiday schedule will cause confusion and additional strain on our operations.

Impact on Care Access:
Ultimately, this rule places the financial burden on nursing homes without ensuring that our seniors will continue to receive the care they need. Many facilities, particularly those in rural areas like ours, are already struggling with staffing shortages and rising costs. Adding these holiday pay requirements without the necessary funding will put us in an impossible position, forcing us to make difficult choices that may include reducing services, limiting admissions, or in the worst-case scenario, closing our doors altogether.

I respectfully ask that the Board reconsider the holiday pay rule and work with the Legislature to secure adequate funding before imposing any new financial requirements on nursing homes. Without this support, the proposed rule will do more harm than good, particularly to the vulnerable populations we serve.

Thank you for considering my comments. I also request that a public hearing be held to further discuss this matter and its far-reaching consequences.

Sincerely,

Chester Fishel, Administrator
Viewcrest Health Center, Duluth

From:	Katherine Holland
To:	RULES, DLI (DLI)
Subject:	Comments on NHWSB proposed rules
Date:	Monday, September 23, 2024 11:27:47 AM
Attachments:	Outlook-rqlqgp1q.png Outlook-twwwijzq.png SKM_80824092310210.pdf

Attached please find my comments.

Thank you!

Kathy Holland
Administrator
Villas at New Brighton
825 1st Avenue NE
New Brighton, MN 55112
612-257-0254 cell
WWW.MONARCHMN.COM
Book time to meet with me

THE VILLAS
AT NEW BRIGHTON

September 23, 2024

VIA EMAIL ONLY

Minnesota Department of Labor and Industry
Attn: Leah Solo
443 Lafayette Road North
Saint Paul, Minnesota 55155
dli.rules@state.mn.us

Re: Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 - 5200.2050
OAH Docket No. 28-9001-40213

Dear Honorable Judge Joseph Meyer:

I am writing as the Administrator of the Villas at New Brighton, a skilled nursing facility located in New Brighton. Our facility proudly employs over 100 individuals, and we also contract with vendors and agency staff when necessary to provide critical care to vulnerable populations, including elderly residents who depend on our services for daily living and medical support. Due to the nature of our operations, we encounter unique challenges in staffing and budgeting.

We **oppose** the proposed rule mandating that nursing home employees receive time-and-one-half pay for all hours worked during the eleven specified holidays, as we believe it will have several unintended consequences that will adversely impact both our facility and the people we serve.

1. **Financial Challenges**

In the current landscape of record wage inflation and heightened competition for workers, our facilities face significant financial challenges that hinder our ability to attract and retain qualified staff. Competing industries, such as retail and food service, often offer higher wages and more flexible working conditions, which makes it increasingly difficult for us to fill essential positions. The unique role that our state and federal government partners play in supporting wages through Medicare and Medicaid complicates this issue further.

The Board's proposal to mandate higher pay for staff without providing additional funding places an untenable burden on nursing homes. We are being asked to meet the expectations of improved worker compensation while grappling with the financial realities of our operational budgets. The Medicaid and CHIP Payment and Access Commission has reported that current basic Medicaid rates only cover approximately 86% of nursing home costs. This existing shortfall means that many facilities are already operating at a financial disadvantage, struggling to cover the true costs of the care we provide.

825 FIRST AVENUE NW • NEW BRIGHTON, MINNESOTA 55112
651.633.7875 | F: 651.628.9335
WWW.MONARCHMN.COM

To maintain the quality of care that our residents deserve, it is imperative that nursing homes receive reimbursement that accurately reflects the actual costs of delivering services. Without this essential support, the proposed rule could exacerbate existing financial strain, forcing facilities to make difficult decisions that ultimately impact the quality of care and services available to our vulnerable populations. We urge the Board to recognize these financial challenges and provide the necessary funding to support fair employee compensation while ensuring the sustainability of nursing home operations.

2. **Staffing and Schedule Changes**

Skilled nursing facilities operate around the clock, 365 days a year. Scheduling staff for holidays is a delicate process that often requires careful negotiation, as employees have different preferences for which holidays they value. The proposed rule mandating time-and-a-half pay for all hours worked during the 11 specified holidays would significantly reduce this scheduling flexibility, making it more challenging to meet staffing needs while accommodating employee preferences.

While the intent of higher holiday pay is to benefit employees, the uneven distribution of holiday shifts—driven by seniority and individual preferences—could lead to resentment among staff. Some employees may not prioritize certain holidays, while others might feel compelled to work on days that are significant to them. This imbalance could harm employee morale over time, leading to increased turnover, especially if staff feel pressured to work undesirable shifts despite the additional pay.

The lack of flexibility in scheduling, coupled with the potential for conflict among staff regarding holiday assignments, may also strain labor relationships and disrupt the cooperative environment that is vital to our operations. With our already limited resources and the complexities introduced by this rule, maintaining a positive workplace culture while ensuring adequate staffing levels during the holidays could become increasingly challenging. Ultimately, these staffing and scheduling challenges could further jeopardize the quality of care we provide to our residents, undermining our mission to support the vulnerable populations who depend on our services.

3. **Vendor and Contracting Issues**

Additionally, our facilities rely on outside vendors for critical services such as housekeeping, laundry, and dietary support. The proposed rule raises significant uncertainty regarding whether contract employees would be subject to the same holiday pay requirements. If these vendors are required to comply with the new rules, it would necessitate reopening and renegotiating existing vendor contracts, adding yet another layer of complexity and strain to our operations.

The potential for increased costs associated with vendor compliance could further exacerbate the financial challenges we face, especially given our tight margins in rural areas where we operate. These renegotiations would not only consume valuable administrative resources but could also lead to disruptions in services during a time when stability is crucial for the well-being of our residents.

The necessity to navigate these contracting issues could distract our management teams from focusing on providing quality care and supporting our staff. As we strive to maintain the highest standards of service for our vulnerable populations, these additional burdens could compromise our mission and impact our ability to deliver essential services effectively.

4. Implementation Challenges

The January 1, 2025, effective date for this rule poses significant challenges for our organization. In addition to the financial implications of adding new holidays, we currently offer several paid holidays that are not recognized as official state holidays. Given the anticipated timeline for the approval of this rule, we will have less than two months to gather feedback from employees and establish a new holiday schedule for 2025.

Following this initial adjustment, we will face the daunting task of revising our payroll practices and scheduling policies to align with the new holiday schedule. The compressed timeline presents a substantial operational hurdle, as effective implementation will require careful coordination among various departments, including human resources and finance.

The Board's reluctance to consider a more realistic implementation date demonstrates a lack of understanding of provider operations and the complexities involved in executing significant changes within such a tight timeframe. To ensure a smooth transition and minimize disruption to our services, we respectfully urge the Board to reassess the implementation date, allowing sufficient time for facilities to prepare adequately. Without this consideration, the successful rollout of the new requirements may be severely compromised, ultimately affecting the quality of care we provide to our residents.

Thank you for your time and consideration.

Sincerely,

Katherine Holland

Katherine Holland
Administrator
Villas at New Brighton
612-257-0254
kholland@monarchmn.com

Becerra, Linnea (She/Her/Hers) (DLI)

From: Pernella Bull <ncbull1234@gmail.com>
Sent: Monday, August 26, 2024 11:26 AM
To: RULES, DLI (DLI)
Subject: Charles Bull

CSG Grant. I am a wife of a CSG Grant. Does this notice apply to me?

From: Fred Struzyk
To: RULES, DLI (DLI)
Subject: comments to workforce standards board
Date: Friday, September 13, 2024 8:12:18 AM

attn: Leah Solo

The workforce standards board proposed rule is requiring 11 holidays at one and half times their regular pay. With 1300 employees working with me, this unfunded mandate will have a negative impact on operations of the buildings.

Thank you

Fred Struzyk LHSE
Premier Healthcare Management, Principal

Member of Premier Health Care Management: Hilltop Health Care Center, Garden View at Hilltop, Paynesville Health Care Center, Sandstone Health Care Center, Serenity Place on 7th, Serenity Court, Koronis Place, Cura of Benson, Cura of Melrose, Cura of Monticello, Cura of Le Sueur, Cura of Willmar, Cura of Sauk Centre

RECEIVED
By: OAH on 9/3/2024

EVENTIDE
Senior Living Communities

801 Main Avenue, Suite 201
Moorhead, MN 56560
218-291-2230 | fax: 218-477-3250

September 4, 2024

Leah Solo, Executive Director
Nursing Home Workforce Standards Board
443 Lafayette Rd. N., St. Paul
MN 55155

Reference: Comment to Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 – 5200.2050, Revisor's ID Number R-04870

Dear Executive Director Solo:

Thank you for the opportunity to comment on the proposed holiday pay proposed rule. I respectfully urge the Nursing Home Workforce Standards Board (the Board) to reconsider this misguided standard and rule.

My name is Emily Kollar and I am the Executive Director at Eventide in Moorhead, Minnesota. I have been in my role for four years and with Eventide for five years. I love the work my team and I do that contributes to great care for our residents here in their homes at Eventide. I work in long-term care because I am passionate about not only providing great care, but also providing a great home and sense of community for our residents, staff, and guests.

Eventide is a faith-based, non-profit senior healthcare organization based in Moorhead, Minnesota. We provide a full range of lifestyle and service options, including independent and assisted living, memory care, skilled nursing care and transitional care. With over 1,100 employees, Eventide serves over 1,200 residents daily at our locations in Moorhead, MN, Fargo, West Fargo, Jamestown and Devils Lake, ND.

To be clear, Eventide has always supported our workers and their ability to earn a life-sustaining wage. However: it is the responsibility and obligation of our state's elected officials to fund these investments. That is why nursing homes like mine have called for funding to raise wages year after year. Specifically, during this past legislative session, HF3391/SF4130 would have provided funding to nursing homes for employee compensation via a rate increase, and at higher compensation levels than proposed by the Board. To my surprise and disappointment, this appropriation was not passed into law.

Absent leadership and support from the Legislative and Executive Branches, this proposed rule is an unfunded mandate that forces providers like me to afford these paid holidays and their wage rates by deferring funding to other needs that are critical to providing quality care for the seniors we serve.

The Board fails to consider, or worse ignores, critical facts and impacts in the development of these standards and moving forward with the standards as proposed could recklessly put the access of essential nursing home

801 Main Avenue, Suite 201
Moorhead, MN 56560
218-291-2230 | fax: 218-477-3250

care in jeopardy for communities all over Minnesota. First, Minnesota is and will continue to experience a decline in workers[1]. Additionally, the Board has completely ignored the financial impacts to providers, including

the limitations of state funding for nursing homes, such as a nearly 2-year delay in the recognition of new costs and the additional restrictions created by our rate equalization law.

Most disappointingly and critically, the Board's standard fails to guarantee access to quality care for Minnesota's seniors and is likely to decrease access to services available to our state's older adults.

I want to focus on my serious concerns about the proposed holiday pay standard on the fact that it's an unfunded mandate and the financial challenges this could present, as well as the implementation challenges this creates.

Unfunded mandate

The statute establishing this Board and the creation of standards also made clear that new standards should be funded with adequate funding before becoming effective. If the Board is going to require providers to pay time and a half for additional holidays, then lawmakers must take steps to fund the increased wage costs upfront and before the standard can take effect. Nursing homes cannot shoulder the burden these standards alone, especially when the state and federal governments are responsible for providing the funds to them. In the case of our facility, we will need to add four holidays in 2025 at an estimated new cost of $150,000.

Financial challenges

In a time of record wage inflation and market competition for workers, we cannot compete with retail, food service, or other industries, particularly given the unique role that our state and federal government partners have in supporting wages through Medicare and Medicaid. **The Board is asking nursing homes to do the impossible – pay staff more without any additional funding.**

The Medicaid and CHIP Payment and Access Commission has reported that current basic Medicaid rates only cover 86% of nursing home costs.[2] We must ensure nursing homes are reimbursed for the true cost of the care they provide.

Implementation challenges

The effective date of January 1, 2025, for this rule is very problematic for our organization. In addition to the cost of adding new holidays, we currently offer some paid holidays that are not official state holidays. Based on the expected timeline for approval of this rule, we will have less than two months to receive feedback from employees and implement a new holiday schedule for 2025. Once that is done, we will have to adjust payroll practices and scheduling policies to implement the new holiday schedule. The Board's unwillingness to

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[1] Minnesota State Demographer, 2016. https://mn.gov/admin/assets/demographic-considerations-planning-for-mn-leaders-msdc-march2016_tcm36-219453.pdf

[2] Medicaid and CHIP Payment and Access Commission, (2023, January). Estimates of Medicaid Nursing Facility Payments Relative to Costs. https://www.macpac.gov/wp-content/uploads/2023/01/Estimates-of-Medicaid-Nursing-Facility-Payments-Relative-to-Costs-1-6-23.pdf

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Senior Living Communities
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consider a more realistic implementation date show that they do not understand provider operations and the challenges they face in implementing major changes in an unrealistic time frame.

In order to provide a true benefit to our employee's, we should consider their feedback in what additional four holidays would be the most beneficial for them, but this effective date leaves us no room to actually implement this in the correct way, to ultimately meet the intention of this rule.

Eventide also has a very flexible holiday plan for our employees. Currently, Part Time and PRN (as needed) employees already receive time and a half on the holidays. However, our Full-Time employees have their holiday hours put into their regular PTO hours to provide them DOUBLE pay on the holiday as they can take the PTO even if they are scheduled to work, plus an additional $1/hour. The implementation of this rule will actually be a loss for our full-time employees as it would limit the use of the holiday hours, creating a separate bank that "locks" them in to only using those hours when they don't work on a holiday. We also do not require our full time employees to use their Holiday PTO if they work they holiday; it's optional for them to receive the double pay and they could choose to keep those PTO hours in their bank and use it on another day that better suits them and their personal beliefs or life.

We also operate in more than just the state of Minnesota, with locations just a few miles away across a state border. These forced rules and the financial challenges they present, would prevent us from having consistent practices amongst our locations that are in the same geographic footprint. Ultimately, causing staff frustration and concern.

In summary, this proposed standard requires nursing homes to pay holiday wages that are not currently part of reimbursement rates, meaning in simple terms it is an unfunded mandate. Tying the hands of providers by forcing employees to accept specific holidays will not achieve its intended impact. Such impacts will be directly felt by residents, their families, and communities as a result. Accordingly, we are opposed to this entire rule and request its disposition be resolved during a public hearing.

Thank you for considering my comments and request for public hearing.

Sincerely,

[Insert your name and title]

 RECEIVED
By: OAH on 9/5/2024

EVENTIDE
Senior Living Communities

801 Main Avenue, Suite 201
Moorhead, MN 56560
218-291-2230 | fax: 218-477-3250

August 30, 2024

Leah Solo, Executive Director
Nursing Home Workforce Standards Board
443 Lafayette Rd. N., St. Paul
MN 55155

Reference: Comment to Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 – 5200.2050, Revisor's ID Number R-04870

Dear Executive Director Solo:

Thank you for the opportunity to comment on the proposed holiday pay proposed rule. I respectfully urge the Nursing Home Workforce Standards Board (the Board) to reconsider this misguided standard and rule.

My name is Kayla Linn, and I am the Vice President of People and Culture at Eventide. Eventide is a faith-based, non-profit senior healthcare organization based in Moorhead, Minnesota. We provide a full range of lifestyle and service options, including independent and assisted living, memory care, skilled nursing care and transitional care. With over 1,100 employees, Eventide serves over 1,200 residents daily at our locations in Moorhead, MN, Fargo, West Fargo, Jamestown and Devils Lake, ND.

In my role, I oversee the Human Resources functions for the organization. I have been with Eventide for about eight years, and have seen the shift of the workforce pre and post pandemic. Over the last several years, Eventide has made it a priority to ensure that we offer competitive wages to our employees, while also ensuring we operate within the means of our revenues.

Eventide is a faith-based, non-profit senior healthcare organization based in Moorhead, Minnesota. We provide a full range of lifestyle and service options, including independent and assisted living, memory care, skilled nursing care and transitional care. With over 1,100 employees, Eventide serves over 1,200 residents daily at our locations in Moorhead, MN, Fargo, West Fargo, Jamestown and Devils Lake, ND.

To be clear, Eventide has always supported our workers and their ability to earn a life-sustaining wage. However: it is the responsibility and obligation of our state's elected officials to fund these investments. That is why nursing homes like mine have called for funding to raise wages year after year. Specifically, during this past legislative session, HF3391/SF4130 would have provided funding to nursing homes for employee compensation via a rate increase, and at higher compensation levels than proposed by the Board. To my surprise and disappointment, this appropriation was not passed into law.

Absent leadership and support from the Legislative and Executive Branches, this proposed rule is an unfunded mandate that forces providers like me to afford these paid holidays and their wage rates by deferring funding to other needs that are critical to providing quality care for the seniors we serve.

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The Board fails to consider, or worse ignores, critical facts and impacts in the development of these standards and moving forward with the standards as proposed could recklessly put the access of essential nursing home care in jeopardy for communities all over Minnesota. First, Minnesota is and will continue to experience a decline in workers[1]. Additionally, the Board has completely ignored the financial impacts to providers, including the limitations of state funding for nursing homes, such as a nearly 2-year delay in the recognition of new costs and the additional restrictions created by our rate equalization law.

Most disappointingly and critically, the Board's standard fails to guarantee access to quality care for Minnesota's seniors and is likely to decrease access to services available to our state's older adults.

I want to focus on my serious concerns about the proposed holiday pay standard on the fact that it's an unfunded mandate and the financial challenges this could present, as well as the implementation challenges this creates.

Unfunded mandate

The statute establishing this Board and the creation of standards also made clear that new standards should be funded with adequate funding before becoming effective. If the Board is going to require providers to pay time and a half for additional holidays, then lawmakers must take steps to fund the increased wage costs upfront and before the standard can take effect. Nursing homes cannot shoulder the burden these standards alone, especially when the state and federal governments are responsible for providing the funds to them. In the case of our facility, we will need to add four holidays in 2025 at an estimated new cost of $150,000.

Financial challenges

In a time of record wage inflation and market competition for workers, we cannot compete with retail, food service, or other industries, particularly given the unique role that our state and federal government partners have in supporting wages through Medicare and Medicaid. **The Board is asking nursing homes to do the impossible – pay staff more without any additional funding.**

The Medicaid and CHIP Payment and Access Commission has reported that current basic Medicaid rates only cover 86% of nursing home costs.[2] We must ensure nursing homes are reimbursed for the true cost of the care they provide.

Implementation challenges

The effective date of January 1, 2025, for this rule is very problematic for our organization. In addition to the cost of adding new holidays, we currently offer some paid holidays that are not official state holidays. Based on the expected timeline for approval of this rule, we will have less than two months to receive feedback from employees and implement a new holiday schedule for 2025. Once that is done, we will have to adjust payroll practices and scheduling policies to implement the new holiday schedule. The Board's unwillingness to

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[2] Medicaid and CHIP Payment and Access Commission, (2023, January). Estimates of Medicaid Nursing Facility Payments Relative to Costs. https://www.macpac.gov/wp-content/uploads/2023/01/Estimates-of-Medicaid-Nursing-Facility-Payments-Relative-to-Costs-1-6-23.pdf

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In order to provide a true benefit to our employees, we should consider their feedback in what additional four holidays would be the most beneficial for them, but this effective date leaves us no room to actually implement this in the correct way, to ultimately meet the intention of this rule.

Eventide also has a very flexible holiday plan for our employees. Currently, Part Time and PRN (as needed) employees already receive time and a half on the holidays. However, our Full-Time employees have their holiday hours put into their regular PTO hours to provide them DOUBLE pay on the holiday as they can take the PTO even if they are scheduled to work, plus an additional $1/hour. The implementation of this rule will actually be a loss for our full-time employees as it would limit the use of the holiday hours, creating a separate bank that “locks” them in to only using those hours when they don’t work on a holiday. We also do not require our full-time employees to use their Holiday PTO if they work the holiday; it’s optional for them to receive the double pay and they could choose to keep those PTO hours in their bank and use it on another day that better suits them and their personal beliefs or life.

We also operate in more than just the state of Minnesota, with locations just a few miles away across a state border. These forced rules and the financial challenges they present, would prevent us from having consistent practices amongst our locations that are in the same geographic footprint. Ultimately, causing staff frustration and concern.

In summary, this proposed standard requires nursing homes to pay holiday wages that are not currently part of reimbursement rates, meaning in simple terms it is an unfunded mandate. Tying the hands of providers by forcing employees to accept specific holidays will not achieve its intended impact. Such impacts will be directly felt by residents, their families, and communities as a result. Accordingly, we are opposed to this entire rule and request its disposition be resolved during a public hearing.

Thank you for considering my comments and request for public hearing.

Sincerely,

Kayla Linn
Vice President of People and Culture
Eventide Senior Living

RECEIVED
By: OAH on 9/16/2024
Brian Bernander Attachment

Date: September 20, 2024

OAH Docket Number: 28-9001-40213

Presiding Judge: Administrative Law Judge Joseph Meyer

Comment Period: August 26, 2024 through 4:30 p.m. on September 25, 2024

Re: Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 - 5200.2050.

I am the Owner at St. Otto's Care Center.

We are a 91-bed skilled nursing facility that cares for our local community with residents from ages 39-105. As the largest nursing home in the county, we employee nearly 200 in this small rural community. More holidays will mean more days of paid time off (PTO) that employees will need to use as they rotate through the holiday schedule through the year. Doesn't make sense that employees will need to burn a day of PTO on account of the state mandating 2 more holidays for our employees. Heaven for bid they used all of the PTO and will have a short check when they don't have to work one of the extra holidays.

The worst word in the nursing home sector is "Mandate." Our facility eliminated mandating employees into extra hours a handful of years ago and it has yielded great benefits for our employee moral, and recruitment. In the same token, stop mandating businesses to follow rules made by people that don't know the first thing about running a business, much less one with as small of margins as the nursing home industry. Let the businesses owners run the businesses as we know how to. Where do you propose I find the extra $40,000 to fund these extra holidays per year? Maybe I can terminate a few employees because you know we have excess of those. Maybe the workforce board members could come and volunteer on those 4 extra holidays? Maybe the workforce board members could plead with the legislators and governor to increase the daily rates to meet the increased costs of both the added holidays and "minimum wage" pay. Maybe the workforce board members will enjoy the responsibility of caring for their own family members as more facilities across the state will continue to close with these unfunded mandates.

The proposed rule mandates that a nursing home employee who works any of the specified eleven holidays is paid a minimum of time-and-one-half their regular hourly wage for all hours worked during the holiday. I oppose the proposed rule language and request a public hearing.

- The mandated eleven state holidays are unfunded. Minnesota's Medicaid nursing facility payment system uses a facility submitted cost report. After auditing, the Minnesota Department of Human Services (DHS) January establishes Medicaid Rates on January 1 that reflect costs incurred 15 to 27 months prior.

- Nursing facilities engage in annual budgeting processes that begin a full year in advance. The mandated state holidays are an unanticipated change and are an unplanned expenditure.

- The January 1, 2025 effective date allows little time to implement the mandated eleven holidays. Nursing facilities are open 24 hours a day, seven days a week, 365 days a year. Planning and scheduling holidays requires detailed planning. Employees value certain holidays more than others. Employees also understand the inherent trade-offs of wanting to take Easter off will mean working on July 4. The proposed rule will become administrative law a month before the effective date.

Sincerely,
Brian Bernander
CEO/Owner
St. Otto's Care Center

RECEIVED
By: OAH on 9/17/2024

Danielle Olson Attachment

Date: September 17, 2024

OAH Docket Number: 28-9001-40213

Presiding Judge: Administrative Law Judge Joseph Meyer

Comment Period: August 26, 2024 through 4:30 p.m. on September 25, 2024

Re: Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 - 5200.2050.

I am the Executive Director at Emmanuel Nursing Home in Detroit Lakes, MN.

Emmanuel Nursing Home is a 62 bed skilled nursing facility part of the Ecumen Detroit Lakes continuum of care campus. Our campus serves those with Independent Living, Assisted Living, Short Term Care and Long Term Care needs. We provide care in rural Minnesota for a population that is often underserved.

The proposed rule mandates that a nursing home employee who works any of the specified eleven holidays is paid a minimum of time-and-one-half their regular hourly wage for all hours worked during the holiday. I oppose the proposed rule language and request a public hearing.

- The mandated eleven state holidays are unfunded. Minnesota's Medicaid nursing facility payment system uses a facility submitted cost report. After auditing, the Minnesota Department of Human Services (DHS) January establishes Medicaid Rates on January 1 that reflect costs incurred 15 to 27 months prior.
  It is estimated that this unfunded mandate will cost our facility $15,000, which is $15,000 that will be reduced in some way. Our facility has faced many challenges and changes primarily due to lack of qualified workforce in our area and another $15,000 reduction in expenses will impact our team members and residents in some way. Perhaps that will be a reduction in benefits or a smaller wage increase, or maybe it will be forgoing upgrades to pieces of equipment to fund this unfunded mandate. Wherever the funds come from, it will have a negative impact on our team members.

- Nursing facilities engage in annual budgeting processes that begin a full year in advance. The mandated state holidays are an unanticipated change and are an unplanned expenditure.

- The January 1, 2025 effective date allows little time to implement the mandated eleven holidays. Nursing facilities are open 24 hours a day, seven days a week, 365 days a year. Planning and scheduling holidays requires detailed planning. Employees value certain holidays more than others. Employees also understand the inherent trade-offs of wanting to take Easter off will mean working on July 4. The proposed rule will become administrative law a month before the effective date.

Adding additional holidays not only adds expense but will require team members to use additional PTO hours when they have a holiday off. Our team members prefer to use their PTO for planned time off rather than having to use the time to cover holidays off. They could opt not to apply PTO to the additional holiday shifts; however, they will see a reduced amount on their paycheck. Using PTO to cover holidays or being ”short” on a paycheck certainly are not scenarios that are in the best interest of the team members. If the Nursing Home Workforce Standards Board is truly acting in the best interest of the team members, they would see this is not the best solution.

- We also operate licensed an assisted living facility on our campus. Assisted living staff may not work at a nursing facility, but they are employees of our organization. The proposed rule will create either additional expenditure and/or administrative burden for our organization when implementing this Minnesota specific mandate.
  Our team members have the same holiday schedule, overtime rules, and shift differentials across our campus. Extending the holiday mandate to the Assisted Living team members will add additional expense to a setting that has not planned or budgeted for it. Not extending the holiday mandate will result in an administrative burden and could negatively impact our Assisted Living if current or prospective team members opt to work in the nursing home due to the holiday policy differences.

Thank you for your consideration.

Sincerely,

Danielle Olson
Executive Director
Ecumen Detroit Lakes – Emmanuel Nursing Home

RECEIVED
By: OAH on 9/18/2024
James Newbrough Attachment

sholom Care Compassion Community

3620 Phillips Pkwy • St. Louis Park, MN 55426 • TEL 952.935.6311 • FAX 952.939.1662 • www.sholom.com

Submitted Electronically

September 18, 2024

Leah Solo, Executive Director
Nursing Home Workforce Standards Board
443 Lafayette Rd. N.,
St. Paul, MN 55155

Reference: Comment to Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 – 5200.2050, Revisor's ID Number R-04870

Dear Executive Director Solo:

Thank you for the opportunity to comment on the proposed holiday pay rule. I respectfully urge the Nursing Home Workforce Standards Board (the Board) to reconsider this standard and rule.

To be clear, Sholom has consistently supported our staff and their right to earn a life-sustaining wage. However: it is the responsibility and obligation of our state's elected officials to fund these investments. That is why nursing homes like ours have called for funding to raise wages year over year. Specifically, during this past legislative session, HF3391/SF4130 would have provided funding to nursing homes for employee compensation via a rate increase, and at higher compensation levels than proposed by the Board. To our surprise and disappointment, this appropriation was not passed into law.

Absent leadership and support from the Legislative and Executive Branches, this proposed rule is an unfunded mandate that forces providers like Sholom to cover the cost of these paid holidays by deferring funding to other needs that are critical to providing quality care for the seniors we serve.

The Board failed to consider, or worse ignored, critical facts and impacts in the development of these mandates and moving forward as proposed could reduce seniors' access to essential services. This includes, but is not limited to, nursing home care for communities all over Minnesota. First, Minnesota is and will continue to experience a decline in workers[1]. Additionally, the Board has ignored the financial impacts to providers. Not only are there caps on reimbursement, more egregiously, there is a nearly 2-year delay in the recognition of new costs and the additional restrictions created by our rate equalization law. Most disappointing and more critically, the Board's standard fails to guarantee access to quality care for Minnesota's seniors and is likely to decrease access to services available to our state's older adults.

[1] Minnesota State Demographer, 2016. https://mn.gov/admin/assets/demographic-considerations-planning-for-mn-leaders-msdc-march2016_tcm36-219453.pdf

I want to focus this letter on our serious concerns about the proposed holiday pay standard; specifically, the unfunded mandate that will result in organizational financial challenges and the impact this will have on the healthcare system in the area as well as the real impact this will have on our employees.

My name is Jim Newbrough, and I am the CEO of Sholom Community Alliance. I have been in healthcare for more than 30 years, and Senior Care for the past 8 years. I believe in taking care of seniors and providing them with the highest quality care and service. Our industry has been challenged in recent years with the COVID 19 pandemic and lingering labor issues as a result of it. We are attempting to recover, but his unfunded mandate will make that increasingly more difficult.

Our Organization, which includes two care centers, has been an integral part of Sholom's over 100-year legacy of serving seniors in the Twin Cities. These buildings located on the Ackerberg Family Campus (Sholom Home West) and Shaller Family Campus (Shirley Chapman Sholom Home East) are located within the metro area and are connected physically to create a campus community that serves independent living, assisted living and HUD tenants.

Additionally, our organization provides home care and hospice services to the broader metro area.

Unfunded mandate

The statute establishing this Board and the creation of standards made it clear that new standards should be adequately funded before becoming effective. If the Board is going to require providers to pay time and a half for additional holidays, then lawmakers must take steps to fund the increased wage costs upfront and before the standard takes effect. Nursing homes cannot shoulder the burden of the cost of these standards alone, particularly when the state and federal governments have the responsibility for providing the funds.

As an organization, we calculated the impact of the proposed holiday pay rule on our nursing facilities based on our actual wage, holiday, and paid time off (PTO) structure as well as how the change will impact other employees whose holiday, wages, and PTO would need to be adjusted based on wage and benefit equity across the organization and to be competitive in the labor market.

In order for our organization to fund this mandate, we must consider reducing the current PTO accrual rates by a number of days to help cover the cost of the proposed holiday pay rule in addition to taking a number of other cost reducing measures aimed at reducing the cost of our benefits. The current estimation for just the additional days of holiday pay per year is $650,000 annually.

The holiday pay standard is an unfunded mandate. Unfortunately, the financial challenges caused by this proposed holiday pay rule is compounded by the cost of the proposed minimum wage standard rule and the loss of the $12.35 add on rate.

In a time of record wage inflation and market competition for workers, we cannot compete with retail, food service, or other industries, particularly given the unique role that our state and federal government partners have in supporting wages through Medicare and Medicaid. **The Board is asking organizations to do the impossible – pay staff more without any additional funding.**

The Medicaid and CHIP Payment and Access Commission has reported that current basic Medicaid rates only cover 86% of nursing home costs.[1] We must ensure nursing homes are reimbursed for the true cost of the care they provide.

Each of these elements represents a major financial burden. Our nursing facility's Medicaid and Private Pay Rates are determined with allowable costs incurred between 15 to 27 months earlier. Because of the auditing process, it is impossible for our nursing facility to know what the rates will be until the Minnesota Department of Human Services calculates 45-days prior to January 1 of each year. Without corresponding upfront increases in funding, we face the untenable position of reallocating funds from critical service areas, or worse, cutting back on services altogether. This scenario directly jeopardizes our mission and ability to meet the needs of the community we serve.

With the equalization of Medicaid and private pay rates, the state funded managed care programs for seniors (MSC + and MSHO), and Medicare, nearly all of our funding and rates are controlled by the state and federal governments. Unlike other businesses, we are unable to raise our prices to meet new expenses.

Implementation challenges

The effective date of January 1, 2025, for this rule is problematic for our organization. In addition to the cost of adding new holidays, we currently offer some paid holidays that are not official state holidays. Based on the expected timeline for approval of this rule, we will have less than two months to calculate, communicate and implement a new holiday schedule for 2025. Once that is done, we will have to adjust payroll practices and scheduling policies to implement the new holiday schedule. The Board's unwillingness to consider a more realistic implementation timeline demonstrates that they do not understand provider operations and the challenges they face in implementing major changes in an unrealistic time frame.

In summary, this proposed standard requires nursing homes to pay holiday wages that are not currently part of reimbursement rates, in simple terms it is an unfunded mandate. Because we value our employees and are concerned about creating inequities within the organization we would be compelled to implement the mandated holidays across the organization. This effectively mandates us to change our compensation and benefits for everyone. Such impacts will be directly felt by residents, their families, and communities as a result. Accordingly, we are opposed to this entire rule and request its disposition be resolved during a public hearing.

Thank you for considering our comments and request for a public hearing.

Sincerely,

Jim Newbrough

Jim Newbrough
Chief Executive Officer

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[2] Medicaid and CHIP Payment and Access Commission, (2023, January). Estimates of Medicaid Nursing Facility Payments Relative to Costs. https://www.macpac.gov/wp-content/uploads/2023/01/Estimates-of-Medicaid-Nursing-Facility-Payments-Relative-to-Costs-1-6-23.pdf

RECEIVED
By: OAH on 9/20/2024

Submitted Electronically

9/20/2024

Leah Solo, Executive Director
Nursing Home Workforce Standards Board
443 Lafayette Rd. N., St. Paul
MN 55155

Reference: Comment to Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 – 5200.2050, Revisor's ID Number R-04870

Dear Executive Director Solo:

Thank you for the opportunity to comment on the proposed holiday pay proposed rule. I respectfully urge the Nursing Home Workforce Standards Board (the Board) to reconsider this misguided standard and rule.

To be clear, Lake City Care Center has always supported our workers and their ability to earn a life-sustaining wage. However: it is the responsibility and obligation of our state's elected officials to fund these investments. That is why nursing homes like mine have called for funding to raise wages year after year. Specifically, during this past legislative session, HF3391/SF4130 would have provided funding to nursing homes for employee compensation via a rate increase, and at higher compensation levels than proposed by the Board. To my surprise and disappointment, this appropriation was not passed into law.

Absent leadership and support from the Legislative and Executive Branches, this proposed rule is an unfunded mandate that forces providers like me to afford these paid holidays and their wage rates by deferring funding to other needs that are critical to providing quality care for the seniors we serve.

The Board fails to consider, or worse ignores, critical facts and impacts in the development of these standards and moving forward with the standards as proposed could recklessly put the access of essential nursing home care in jeopardy for communities all over Minnesota. First, Minnesota is and will continue to experience a decline in workers[1]. Additionally, the Board has completely ignored the financial impacts to providers, including the limitations of state funding for nursing homes, such as a nearly 2-year delay in the recognition of new costs and the additional restrictions created by our rate equalization law. Most disappointingly and critically, the Board's standard fails to guarantee access to quality care for Minnesota's seniors and is likely to decrease access to services available to our state's older adults.

I want to focus on my serious concerns about the proposed holiday pay standard on the lack of funding, financial challenges, challenges with implementation and issues the local community will face.

My name is Mac Harnisch and I am the Administrator at the Lake City Care Center. I have been an Administrator in long term care for nearly 6 years. I have served at the Lake City Care Center

[1] Minnesota State Demographer, 2016. https://mn.gov/admin/assets/demographic-considerations-planning-for-mn-leaders-msdc-march2016_tcm36-219453.pdf

for 5 years. I chose to work in long term care because I have a passion for serving seniors. I knew early on in my life that I wanted to work with seniors to ensure they receive the quality care that they deserve.

Lake City Care Center is a rural long-term care facility that is owned by Mayo Clinic and operated by Ebenezer. It is a unique relationship that has many benefits. We are licensed to care for up to 90 residents. The care center is connected to a Mayo Emergency Department, clinic and small swing bed. The campus setting provides many opportunities for residents to receive continuity of care all while remaining in the community. Lake City is a small rural town located just over an hour from the Twin Cities. Being a smaller town, the care center is one of the main employers in the area.

Unfunded mandate

The statute establishing this Board and the creation of standards also made clear that new standards should be funded with adequate funding before becoming effective. If the Board is going to require providers to pay time and a half for additional holidays, then lawmakers must take steps to fund the increased wage costs upfront and before the standard can take effect. Nursing homes cannot shoulder the burden these standards alone, especially when the state and federal governments are responsible for providing the funds to them.

Financial challenges

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Implementation challenges

The effective date of January 1, 2025, for this rule is very problematic for our organization. In addition to the cost of adding new holidays, we currently offer some paid holidays that are not official state holidays. Based on the expected timeline for approval of this rule, we will have less than two months to receive feedback from employees and implement a new holiday schedule for 2025. Once that is done, we will have to adjust payroll practices and scheduling policies to implement the new holiday schedule. The Board's unwillingness to consider a more realistic implementation date show that they do not understand provider operations and the challenges they face in implementing major changes in an unrealistic time frame.

City/County challenges

[2] Medicaid and CHIP Payment and Access Commission, (2023, January). Estimates of Medicaid Nursing Facility Payments Relative to Costs. https://www.macpac.gov/wp-content/uploads/2023/01/Estimates-of-Medicaid-Nursing-Facility-Payments-Relative-to-Costs-1-6-23.pdf

Some nursing facilities are unique in the fact they are city or county owned, managed or operated. The Board's "one size fits all" approach does not consider the impact to these municipalities and requirement to use their taxpayer dollars or the respect for their local processes to comply with the holiday pay rule.

In summary, this proposed standard requires nursing homes to pay holiday wages that are not currently part of reimbursement rates, meaning in simple terms it is an unfunded mandate. Tying the hands of providers by forcing employees to accept specific holidays will not achieve its intended impact. Such impacts will be directly felt by residents, their families, and communities as a result. Accordingly, we are opposed to this entire rule and request its disposition be resolved during a public hearing.

Thank you for considering my comments and request for public hearing.

Sincerely,

Mac Harnisch

Administrator

RECEIVED
By: OAH on 9/24/2024

Care Providers of Minnesota

Date: September 24, 2024

OAH Docket Number: 5-9001-40100

Presiding Judge: Administrative Law Judge Joseph Meyer

Comment Period: August 26, 2024 through 4:30 p.m. on September 25, 2024

Re: Proposed Expedited Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 - 5200.2050.

Care Providers of Minnesota is a non-profit membership association with the mission to Lead Members to Excellence. Our 1,000+ member organizations across Minnesota represent non-profit and for-profit organizations providing services along the full spectrum of post-acute care and long-term services and support. We are the state affiliate for the American Health Care Association/National Center for Assisted Living, and with our national partners, we help members succeed.

Care Providers of Minnesota requests a public hearing and opposes the Proposed Expedited Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements for the following reasons.

There are several key points that must be kept in mind when reviewing the proposed nursing home holiday pay standards and the statute (181.211 to 181.217) establishing the Minnesota Nursing Home Workforce Standards Board ("Board").

First, the fiscal note produced by the Minnesota Department of Human Services (DHS) estimates the state share Medicaid costs of implementing the standards for Minnesota. The costs to Minnesota's 338 Medicaid certified nursing facilities reimbursed under Minnesota Statute 256R are not estimated.

Second, the Minnesota Department of Human Services (DHS) establishes Medicaid and Private Pay rates for Minnesota's 338 Medicaid certified nursing facilities that are reimbursed under Minnesota Statute 256R by using the annual Medicaid Statistical Cost Report submitted by each nursing facility. Each nursing facility has a unique set of 48 Medicaid RUG-IV Case Mix Rates.

Third, the DHS nursing facility forecast is used to establish the baseline expenditures for the Executive and Legislative branches' budgeting process. The forecast does not guarantee a specific percentage or total dollar increase or decrease for:

1. The state's on-going budget
2. A specific nursing facility's operating rate.

Instead, the forecast provides the Executive and Legislative branches with the projected program spending under current law that is needed for the biennial budgeting process. The

Statistical Reports and State Budget Forecasts are found here: https://mn.gov/dhs/general-public/publications-forms-resources/reports/financial-reports-and-forecasts.jsp.

The DHS forecast is published twice a year (February and November). A forecast is immediately replaced and forgotten by the budget process when a new forecast is published.

Reason one

The Board and the DHS holiday pay fiscal (https://www.dli.mn.gov/sites/default/files/pdf/nhwsb_5i_WSB_scenario_holiday-pay_only_042924.pdf) note have not evaluated the impact of the proposed rules governing holiday pay on each Minnesota nursing facility. Specifically, the number of holidays that nursing facilities in Minnesota presently provide time-and-one-half the regular hourly wage for all hours worked during the holiday is not known.

The Board and the DHS holiday pay fiscal note assume that Minnesota's nursing facilities have an average of 5.5 holidays and will need to add an additional 5.5 holidays.

Reason two

The state's fiscal note relies on the mean values for a number of variables to estimate the cost to the state and the appropriation needed to allow the holiday pay standard to be implemented. When considering the whole population of nursing facilities and the differences between each and every nursing facility, the use of averages (5.5 holidays) to extrapolate the cost of the holiday pay rule lacks precision. Or put more eloquently, the Board's fiscal note has fallen victim to the fallacy of averages ("you cannot use data about the group to make assumptions about the individual"). See https://inzaneresearch.com/2017/02/17/what-is-the-fallacy-of-the-average/ for full explanation.

Reason three

Even though the fiscal note states the Total Employee Wage Cost is $9.3 million and the Total Medicaid Cost is $5.249 million, the Board asserts that there is no cost to the state:

> "This scenario does not assume a rate increase on the date the standards become effective (1/1/25), beyond rate increases that already occur in current law – future costs will be picked up in cost reporting cycles."

The Board has not answered these questions:

- Will all nursing facilities receive a rate increase on January 1, 2025 that is sufficient to cover the mandate?
- If future costs will be "will be picked up in cost reporting cycles," why do these costs do not require legislative appropriation?

Reason four

The board has not determined if there are any nursing facilities that meet the definitions and actions required by:

Minnesota Statute 14.127 LEGISLATIVE APPROVAL REQUIRED. Subdivision 1. Cost thresholds. An agency must determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed $25,000 for: (1) any one business that has less than 50 full-time employees; or (2) any one statutory or home rule charter city that has less than ten full-time employees. For purposes of this section, "business" means a business entity organized for profit or as a nonprofit, and includes an individual, partnership, corporation, joint venture, association, or cooperative.

Minnesota Statute 14.128 EFFECTIVE DATE FOR RULES REQUIRING LOCAL IMPLEMENTATION. Subdivision 1. Determination. An agency must determine if a local government will be required to adopt or amend an ordinance or other regulation to comply with a proposed agency rule. An agency must make this determination before the close of the hearing record or before the agency submits the record to the administrative law judge if there is no hearing. The administrative law judge must review and approve or disapprove the agency's determination. "Local government" means a town, county, or home rule charter or statutory city.

As of September 17, 2024, the Minnesota Department of Health (MDH) Health Care Directory Database (https://www.health.state.mn.us/facilities/regulation/directory/index.html), there are 349 nursing facilities with the following Types of Ownership, including City, City-County, County, Hospital District Or Authority, State, and Tribal.

Type of Owner	Number of Nursing Facilities	As a Percent
Church Related	16	4.6%
City	13	3.7%
City-County	1	0.3%
Corporation	25	7.2%
County	4	1.1%
For-Profit Limited Liability Company	2	0.6%
Hospital District or Authority	6	1.7%
Limited Liability Company	78	22.3%
Non-Profit Limited Liability Company	3	0.9%
Nonprofit Corporation	179	51.3%
Other Nonprofit Ownership	8	2.3%
Partnership	2	0.6%
State	11	3.2%
Tribal	1	0.3%
Total	349	100%

Reason five

The board has not developed a waiver or variance process for nursing facilities that are unable to meet the proposed standards. According to statute, the Board shall:

> 181.213 Subd. 4. 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.

The requirement that a nursing facility must seek relief from the proposed standards by demonstrating the likelihood of closure or receivership, will damage the nursing facility's ability to retain and recruit workforce.

Reason six

Minnesota Statute 256R establishes Medicaid prospective payment rates on January 1 for each nursing facility using the 12-month DHS audited Medicaid cost report ending 15-months prior to the January 1 rates. Put differently, a nursing facility's January 1 rates are based on costs incurred 15 to 27 months prior. The State of Minnesota establishes (and often increases) a nursing facility's rates by using a nursing facility's past spending.

Nursing facilities do not receive the same rate increases. Nursing facility rate increases (or decreases) differ according to case mix, increase or decrease in census, allowable costs, increased costs due to inflation, size of building, historical rates and spending patterns.

DHS has not estimated the costs of the standard to the state by evaluating the impact on each and every nursing facility. Instead, the state's fiscal note of the proposed rule assumes the percent increases used by the DHS's Medicaid forecast to estimate the state share costs. In fiscal noting the cost of the standards to the state of Minnesota, the Board's fiscal note uses the January 1, 2024, January 1, 2025, and January 1, 2026 increases (which reflect costs already incurred) to fully deduct the state's costs of implementing the standards.

In drafting the proposed rules, the Board did not the investigate the impact of the standard on individual nursing facilities as directed by Minnesota Statute 181.213 Subdivision 2 paragraph C which has specific instructions to evaluate the impact of the standards on Minnesota Statute 256R.21 subdivision 3 and 256R.25.

Both Minnesota Statute 256R.21 subdivision 3 and 256R.25 describe how each Medicaid certified nursing facility has their rates established by DHS.

Minnesota Statute 256R.21 Subd. 3.
Determination of operating payment rates.
A **facility's** operating payment rate is the sum of:
(1) its total care-related payment rate as determined in subdivision two; and

(2) its other operating payment rate as determined in section 256R.24.
A **facility's** operating payment rate is its operating payment rate associated with a case mix index of 1.00.

Neither the state, DHS, or the DHS forecast have an "operating payment rate and employee benefits portion of the external fixed costs payment rate," as described by 181.213 Subdivision 2 paragraph C:

> If the board, in consultation with the commissioner of human services, determines the **operating payment rate and employee benefits portion of the external fixed costs payment rate** will increase to comply with the new employment standards, the board shall report to the legislature the increase in funding needed to increase payment rates to comply with the new employment standards and must make implementation of any new nursing home employment standards contingent upon an appropriation, as determined by sections 256R.21 and 256R.25, to fund the rate increase necessary to comply with the new employment standards.

In estimating the cost of the proposed standards to the state, the Board has not met these requirements. Instead, 256R.21 Subd. 3 and 256.25 provides directions to DHS on how to calculate and establish each Minnesota nursing facility's operating and external fixed rates. The board has not evaluated the impact on each nursing facility.

Finally, 181.213 Subdivision 2 paragraph C also states that the board, "must make implementation of any new nursing home employment standards contingent upon an appropriation, as determined by sections 256R.21 and 256R.25, to fund the rate increase necessary to comply with the new employment standards." This sentence specifically states that implementation of an employment standard is contingent upon an appropriation to fund the "rate increase necessary."

- Neither the state, DHS, nor the DHS forecast have a rate to increase. Only nursing facilities have rates that receive rate increases.
- 256R.21 Subd. 3 or 256R.25 applies to the establishment of a nursing facility's rates.
- There is nothing in the board's fiscal note, cost estimates, or appropriation that translates into the "rate increase necessary" for each nursing facility to comply with the proposed rule.

RECEIVED
By: OAH on 9/24/2024
Blaine Gamst Attachment

Date: September 24, 2024

OAH Docket Number: 28-9001-40213

Presiding Judge: Administrative Law Judge Joseph Meyer

Comment Period: August 26, 2024 through 4:30 p.m. on September 25, 2024

Re: Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 - 5200.2050.

At Ecumen Lakeshore, we serve over 900 individuals annually in our transitional care skilled nursing facility. Our campus also includes assisted living, homecare, and hospice services. Although Ecumen Lakeshore does not participate in the 256R Medicaid program and is not technically subject to this mandate, this proposed language rule will have a significant economic impact on us and all long-term care services in an already very challenging economic environment.

The proposed rule mandates that a nursing home employee who works any of the specified eleven holidays is paid a minimum of time-and-one-half their regular hourly wage for all hours worked during the holiday. I oppose the proposed rule language and request a public hearing.

- Nursing facilities engage in annual budgeting processes that begin a full year in advance. The mandated state holidays are an unanticipated change and are an unplanned expenditure.

- The January 1, 2025 effective date allows little time to implement the mandated eleven holidays. Nursing facilities are open 24 hours a day, seven days a week, 365 days a year. Planning and scheduling holidays requires detailed planning. Employees value certain holidays more than others. Employees also understand the inherent trade-offs of wanting to take Easter off will mean working on July 4. The proposed rule will become administrative law a month before the effective date.

- We also operate licensed assisted living facility, home health, and hospice agencies on our campus. Assisted living staff may not work at a nursing facility, but they are employees of our organization. The proposed rule will create either additional expenditures and/or administrative burden for our organization when implementing this Minnesota specific mandate.

- We work diligently with our three labor unions to establish collective bargaining agreements in good faith. Each of these agreements include language on holidays and how they are paid. We have negotiated over many years and each agreement reflects the uniqueness of the members that are represented. This proposed rule infringes on bargaining unit's ability to participate in the established process that has been outlined by the NLRB.

Thank you for your consideration.

Sincerely,

Blaine Gamst, LHSE, MHA
Executive Director

RECEIVED
By: OAH on 9/24/2024
Steven Chies Attachment

Date: September 23, 2024

OAH Docket Number: 28-9001-40213

Presiding Judge: Administrative Law Judge Joseph Meyer

Comment Period: August 26, 2024 through 4:30 p.m. on September 25, 2024

Re: Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 - 5200.2050.

North Cities Health Care, Inc.

Introductory Comments:

These comments are being submitted by the operator of the skilled nursing facility provider for our operations. We are an owner/operator organization that has been in business for sixty years. Increasing benefits for any employment category can provide a better outcome for the individual employee but will have an impact and unintended consequences on other parts of a skilled nursing facility operations, the State Medicaid Budget, and on other category of care in the senior care sector.

We are submitting our comments to oppose the execution of this rule on an expedited basis and would request a formal rule hearing. Our opposition will be detailed in the comments below.

1- We consider the adoption of this rule to be an unfunded mandate by the Board and is imposed on both providers, the Minnesota Legislature and Governor. The rule has significant financial implications for skilled nursing facility providers and the budget for the State of Minnesota.
2- This proposal needs to have full and transparent testimony from the current administration on the future impact of the rule will have on providers and the State budget including how the increased costs will be recognized by both providers and the State of Minnesota as the major payor for skilled nursing facility residents. What is the actual economic impact of this rule? While some fiscal impact has been provided, it is not accurate, nor does it consider other factors that we have detailed in this document.
3- The proposed mandates that are intended for implementation on January 1, 2025, do not provide sufficient notice for planning to change the employee holidays for 2025. The facilities have not been provided with notice of the rate changes for FY 2025 by the Minnesota Department of Human Services (DHS). It is impossible to determine the fiscal impact until DHS provides the rate information for January 1, 2025. We do not expect this to be provided until late November 2024, making it impossible to budget for any mandated requirements from this proposed rule.
4- The proposed rule interferes with the current benefit package that employees are able to access and fails to recognize the historic level of other employee benefits provided by the facility. It lacks flexibility and the ability to adapt to local employment conditions. The rule is too prescriptive for providers.

5- While the rule as proposed does have language to allow variations, it is not clear how the process would function in practice. For example, how will supervisors who are on a salary rather than a wage to compensate for holidays worked or missed due to scheduling. If a facility wants to substitute one holiday for another, what is the process for seeking concurrence with the employees? Is it a voice vote in a meeting, a ballot, or other means. For operations that are represented by multiple unions, what happens if there is not agreement for this benefit?
6- Under the current Medicaid payment model the State of Minnesota does not have the financial capacity to absorb mandates in our current budgets. If this proposed rule is forced on to skilled nursing facility providers on the dates being directed, we will need to reduce staffing levels unless significant increases in payment from payors can be provided. This may conflict with other rules or requirements.
7- The increase in this employee benefit does not include other senior care providers, such as assisted living, home care, hospice, and day care workers. For campuses that have multiple level of services and care settings, the mandate will put economic pressure on those care settings in order to be competitive. Again, this will have an impact on State Budgets as Medicaid covers the cost of some of those services.
8- Compliance with federal law on Medicaid rates. Federal law requires state Medicaid agencies to report any changes (to CMS) to provider payments that will impact both access to care and quality outcomes. Has the State of Minnesota determined if this rule would impact access to care settings or the quality of care? Seeking federal approval of payments for Medicaid is required by CMS.
9- Federal minimum staffing requirements. The Centers for Medicare and Medicaid have proposed adding minimum staffing requirements (in 2026 and beyond) for skilled nursing facilities that includes changes to the staffing levels of RNs and LPNs. The impact and dates of these requirements are not unknow at this time, as the rule is still in the rule making process.
10- If the costs of these proposals are recognized by the Medicaid payment system for nursing facility providers, it will increase the daily rate on the non-governmental payors, including residents who self-pay. This could pose a burden on that group, including spending down resources and then applying for Medicaid. This will have an impact on the State of Minnesota Budget. Has this impact been considered?
11- Other payors, including Medicare (Fee for Service) Medicare Advantage Plans, Veterans Administration, Health Maintenance Organizations, Commercial Insurance, etc.) are payors to skilled nursing facilities in Minnesota. The non-governmental payors negotiate contracts for care with skilled nursing facility providers. Skilled nursing facility providers have limited ability to negotiate increases in rates, especially between contract dates. Providers are typically locked into contracts that will extend well into 2025 and have not consider the impact of the Board's mandate in its payment models.
12- For the proposed rule to have "outside organizations" provide presentations on "employee rights" we oppose this requirement and provide the following comments:
    a. There are 380 skilled nursing facilities in Minnesota, located in all parts of the state. How will this provision be supported in the timeframe suggested by the Board?
    b. Who is responsible for compensating the presenting organizations?

c. Are all employees required to attend? What happens if an employee cannot attend? Will the presenting organization conduct follow-up meetings? When will the meeting be held? On all shifts? What about weekend only staff?
d. We object to this provision as we want the ability to screen the presenting organizations, including the background of the presenters and the materials being provided. This is a basic management right to protect the organization.
e. Are employees to be compensated for the time spent? What is the financial impact of this requirement on providers?
f. The restrictions on "qualified" presenting organizations is too restrictive and narrow. It fails to allow variations in local areas.

Final Comments and Recommendations:

1- We would ask the process for this rule to include a full hearing with testimony and input from all stakeholders.
2- If a full rule hearing is not selected, we would ask that the dates for implementation be delayed for three (3) years. This would allow future legislative session to explore the potential impact of these requirements on providers, residents, current and future employees, and the State of Minnesota Medicaid program.
3- We would recommend the ALJ reject this proposal and send the rule back to the Board for additional information and transparency in the creating of this unfunded mandate.

RECEIVED
By: OAH on 9/24/2024

Mark Schulz Attachment

Submitted Electronically

September 24, 2024

Leah Solo, Executive Director
Nursing Home Workforce Standards Board
443 Lafayette Rd. N., St. Paul
MN 55155

RE: Comment to Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 – 5200.2050, Revisor's ID Number R-04870

Dear Executive Director Solo:

LeadingAge Minnesota appreciates this opportunity to provide our comments on the Nursing Home Workforce Standards Board (the "Board") proposed holiday pay rules ("rules" or "proposed rules") and express our strong opposition to the entire proposed rules and request they be withdrawn, or alternatively, their disposition be resolved during a public hearing.

Our membership encompasses over 1,000 organizations statewide. Together with thousands of dedicated caregivers, our members serve 60,000 older adults every day across the full continuum of health care, including home and community-based services, independent senior housing, home care, assisted living communities and nursing homes. We unequivocally recognize that Minnesota's nursing homes and their dedicated caregiving staff provide high-quality, compassionate care to thousands of older Minnesotans every day, and we write to share their experience, perspective and voice relating to the issue at hand.

Background and Context

Before offering specific comments, we are compelled to describe the difficult conditions in which Minnesota nursing homes currently operate, to place the Board's proposed rules in context. While we recognize that the Board's charge is to specifically focus on the health and safety of workers in nursing home settings, it is also important to consider the financial condition of the sector and the demographic factors that will place more demands on the sector in coming years.

The number of seniors in our state is rapidly growing. Minnesota is now the home to over one million older adults.[1] 60,000 Minnesotans will turn 65 every year through 2030, when over 20% of our state

[1] *See* Minnesota State Demographic Center, *Minnesota's Aging Population and Disability Communities* (Jan. 8, 2022), available at https://mn4a.org/wp-content/uploads/2022/03/Minnesotas-Aging-Population-and-Disability-Communities-SBrower2022.pdf.

population will be made up of older adults.[2] Seventy percent of adults aged 65+ will require long-term services and supports in their lifetime, with 28 percent of them receiving at least 90 days of nursing home care.[3] In 2023, persons aged 65+ made up 32% of residents in counties outside of the seven-county metropolitan area where they comprised 19% of that urban population.[4] Those percentages will continue to increase as the inevitable occurs—our state's population is getting older, and that acceleration is happening more quickly in rural areas of the state.

Unfortunately, at a time when demand for services is rising, nursing homes are still financially frail: the COVID-19 pandemic and related levels of hyper-inflation has had lasting impact on occupancy and financial health. A recent survey of long-term care providers shows that in Minnesota, almost 10% of nursing homes have completely exhausted reserves. Over twenty Minnesota's nursing homes have closed since 2020, including seven in 2022 and eight in 2023, with two closures currently in process and around 10% of nursing homes indicating that they are considering closure or sale.[5] Furthermore, with the Legislature only providing one-time funding to nursing homes during the last biennium, facilities find themselves facing a rate cut at the end of this calendar year when their temporary funding expires.

As more closures have occurred, access to care has greatly diminished for Minnesotans needing nursing home level of care. It has become a far too common story to hear that a senior needs to leave his or her home community to get the care they need, isolating them from friends and family. And the impact extends to access for acute care as well. There have been countless news stories of hospital patients that stay in inpatient care much longer than needed because there are not available nursing homes to accept those patients. That means that hospitals have also had extended waiting times in their emergency departments and have suffered financial losses.

It is in this context that this Board has proposed another unfunded mandate. Our fear is that the Board has not given sufficient consideration of this context nor accounted for the likelihood that these proposed rules will exacerbate these dire circumstances, undermining the state's responsibility to ensure that Minnesotans have access to safe, quality care in their communities.

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[2] Minnesota State Demographic Center, *Aging - Key Findings* (Oct. 13, 2023), available at https://mn.gov/admin/demography/data-by-topic/aging/.

[3] Office of Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, *What is the Lifetime Risk of Needing and Receiving Long-Term Services and Supports* (Apr. 2019), available at https://aspe.hhs.gov/reports/what-lifetime-risk-needing-receiving-long-term-services-supports-0.

[4] Healthy Minnesota Partnership & Minnesota Department of Health, *2023 Statewide Health Assessment*, (Oct. 2023), available at https://www.health.state.mn.us/communities/practice/healthymnpartnership/docs/2023statewidehealthassessment-publiccomment.pdf.

[5] Long-Term Care Imperative, *LTC Imperative Legislative Summary* (2024).

Comments on Holiday Pay Rules [6]

FAILURE TO FOLLOW STATUTORY REQUIREMENTS – UNFUNDED MANDATE

Issue: A serious defect with the holiday pay portion of the rules is the failure to correctly interpret and follow the statutory requirement for when a legislative appropriation is necessary.

Comment: Minnesota Statutes section 181.213, subdivision (2)(d)(3), requires "an increase" in the costs that impact nursing facility operating payments rates to require an appropriation before they become effective.[7] The statute states:

> (d) In evaluating the impact of the employment standards on payment rates determined by sections 256R.21 and 256R.25, the board, in consultation with the commissioner of human services, must consider the following: … (3) ***if the established nursing home employment standards result in an increase in costs that exceed the operating payment rate and external fixed costs payment rate increase included in the most recent budget and economic forecast*** completed under section 16A.103, effective on the proposed implementation date of the new nursing home employment standards, ***the board must determine if the rates will need to be increased to meet the new employment standards and the standards must not be effective until an appropriation sufficient to cover the rate increase*** and federal approval of the rate increase is obtained.[8]

The Board concluded the proposed rules did not "result in an increase in costs that exceed" forecasted operating payment rates, and as a result the holiday pay standards do not require an appropriation before they become effective. As you will see from the provider comments on these proposed rules, most nursing homes do not currently provide eleven paid holidays annually, so there is a clear additional cost to providing additional holidays where time and a half must be paid.

Under the value-based reimbursement payment system for nursing homes, *any increase in costs will become part of future rates paid to providers* that are not currently accounted within the most recent budget and economic forecast. In the case of the proposed rules, this means that costs from the 2025 calendar year related to the rule will be part of rates in 2027 and beyond. The current forecast of costs and rates for those future years is based on current law, which does not include the impact of the proposed rules. The impact of the proposed rules will clearly exceed currently forecasted rates and should require a legislative appropriation to implement as required by its enabling statute.

Despite the Board's absurd conclusion that the proposed rules will not increase costs to providers in a way that causes costs and rates to exceed current forecasts, it is certain that some nursing homes will

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[6] This written comment is intended to provide only a high-level summary of the primary concerns of LeadingAge MN. LeadingAge MN also supports and incorporates the comments submitted by the Long-Term Care Imperative into our comments. Additional, detailed information and analysis, and assistance with the revision of the proposed rules, is readily available upon request. LeadingAge MN reserves the right to advance additional arguments in the event a further challenge of the proposed rules, or any variation thereof, becomes necessary.
[7] Minn. Stat. § 181.213, subd. 2(d)(3) (emphasis added).
[8] *Id*.

absorb these new costs without offsetting them in a way that avoids cost and rate increases. The Board is required, by its enabling legislation, to review the determination that proposed rules have no impact on increasing costs and resubmit the rule with an effective date that allows the Legislature to act to make an appropriation as clearly required by the statute.[9]

In developing the proposed rules, the Board analyzed costs to the state, inaccurately in our opinion, but chose to—at best—gloss over the costs to nursing home providers. In so doing, the Board not only violated Section 181.213, but also misled the public as to the unfunded costs that individual nursing home providers will incur if the proposed rules are adopted without revision. In addition, because the Board's flawed fiscal analysis fails to consider nursing home provider costs, which are "an important aspect of the problem," the proposed rules are arbitrary and capricious. *See In re Appeal by Meridian Servs., Inc.*, No. A16-1329, 2017 WL 1375310,[10] (Minn. Ct. App. Apr. 17, 2017); *Peterson v. Minn. Dep't of Labor & Indus.*, 591 N.W.2d 76, 79 (Minn. Ct. App. 1999) (applying the arbitrary and capricious standard to a challenge to an administrative rule). For these reasons, the proposed holiday pay rules will not survive judicial review.

The Board obscures the fiscal impact of the proposed rules on nursing home providers by assuming that nursing homes will decrease costs in other areas to comply with the rule. In other words, the Board assumes that nursing home providers will simply absorb the increased costs by cutting services, reducing staff in other areas, or making other adjustments. This is precisely what the Legislature sought to avoid by requiring the Board to secure appropriations necessary to cover additional costs. The Board's attempt to hide the true cost of the proposed rules violates its enabling legislation.

LeadingAge MN estimates that the proposed holiday pay rules, if adopted without revision, will cost the State's nursing home providers approximately **<u>$12 million dollars per year</u>**. The Board has no practical plan for where the money to cover this shortfall will come from and demonstrates no concern for how the unfunded mandate will compromise the long-term viability of nursing homes or access to nursing home care for Minnesotans. The Board's failure to consider and account for these costs to nursing home providers violates Section 181.213 and requires the withdrawal of the proposed holiday pay rules.

LeadingAge MN submits that the proposed rules should be withdrawn, and, at a minimum, a calculation of the necessary appropriation should be included within them.

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[9] Minn. Stat. § 181.213, subd. 2(d).

[10] The impact on smaller facilities with less flexibility in their year-to-year budgets is especially significant because, even if some of the costs of compliance with the proposed holiday pay rules are offset by higher Medical Assistance reimbursement, that offset will be delayed several years. Medical Assistance nursing home payment rates are set based on retrospective costs, meaning that there will necessarily be a delay of nearly two years (or more) between when nursing homes are expected to incur these additional costs and when they will receive any enhanced reimbursement to cover, at least in part, the increased costs. For some nursing homes, this delay may be insurmountable and force them to cease operations.

ADMNISTRATIVE STAFF ARE NOT DEFINED

Issue: The Board has not clarified which employees are "administrative staff" and thus excluded from the "nursing home worker" requirements imposed by the proposed holiday pay rules.

Comment: The proposed rules at proposed part 5200.2000, subp. 1, incorporates by reference Minnesota Statues section 181.211 which defines the term "nursing home worker" as "any worker who provides services in a nursing home in Minnesota, including direct care staff, non-direct care staff, and contractors, but ***excluding administrative staff***, medical directors, nursing directors, physicians, and individuals employed by a supplemental nursing services agency."[11]

To date, the Board has not clarified through its rulemaking which employees are "administrative staff" and thus excluded from the "nursing home worker" proposed rules requirements. Because "administrative staff" is an ambiguous term that could encompass positions ranging from front office workers to those in leadership positions and exempt to non-exempt positions, nursing home providers are again unfairly asked to implement onerous requirements without clear guidance. While the Board was not expressly tasked with providing this clarity, its failure to do so shows, once again, a disregard for the practical implications and challenges of implementing the proposed rules.

Absent such guidance in the proposed rules or other the Board-generated resources, nursing home providers are unfairly asked to incur substantial costs or otherwise risk sanction if, despite their best efforts, they fail to comply with ambiguous statutes and rules.

INSUFFICIENT IMPLEMENATION TIMELINE

Issue: The Board's effective date for the holiday pay portion of the rules of January 1, 2025, provides insufficient time for nursing home employers to engage their employees about it and potentially choose to modify any holiday dates or time as permitted by proposed holiday pay rules.

Comment: The proposed rules set the implementation date of the holiday pay portion as January 1, 2025. With the rulemaking comment period ending in late September, and Board action required to receive, review, and send its final version to the State Register, the earliest that nursing home employers will learn about the new standards is early to mid-November—less than six weeks before the implementation date when the final rule is *officially published* in the State Register.

Nursing home employers have already planned for their calendar year 2025 fiscal operations, changes to fiscal budgeting, payroll systems, employee handbooks and human resource policies and procedures. The proposed rule requires that any changes to the schedule must be set in the year prior to the effective date, which again, under this timeline, yields six calendar weeks to engage employees, modify human resources policies, and account for any budget impact. That is simply unrealistic to operationalize fairly and equitably. Such disregard to these factors in the establishment of the proposed rules speaks volumes of the Board towards nursing home employers and their employees

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[11] Minn. Stat. § 181.213, subd. 2(d) (emphasis added).

State agencies and boards who respect their regulated entities generally collaborate with and acknowledge operational and fiscal considerations of those entities when setting implementation dates for future rules to permit those entities enough time to prepare for the new rules; perhaps that is why those considerations are included in Minnesota's usual and customary rulemaking process. The Board's apparent lack of pragmatism and courtesy with this unreasonable timeline leaves one to question why there is such animosity towards the Board's regulated entities. The idea the Board would force an unrealistic implementation timing because of its failure to adequately prepare for and undertake rulemaking activities and pass those detrimental effects of those decisions onto nursing home employers and their employees is unconscionable.

LeadingAge MN submits that the proposed rules should be withdrawn, and, at a minimum, establish an implementation date that provides a minimal amount of time for nursing home employers to prepare for them after the final version of the rule is officially published.

WORKER ORGANIZATION CERTIFICATION DENIAL OR REVOCATION

<u>Issue</u>: When the Board denies a worker training organization's certification renewal application or revokes its certification, the worker training organization is not required to provide notices or necessary statutorily required information to nursing home providers who are required to maintain it for record-keeping purposes to comply with the law.

<u>Comment</u>: The proposed rules detail the authority the Board has when it decides to deny a worker training organization's certification renewal or to revoke it.[12] However, what is not clearly understood by the proposed rules is what is required of the worker training organization when that Board action occurs. The Board may be assuming the proposed rule's next subpart covers that situation, however, by the plain language of that subpart, the language does not. The relevant proposed rule subpart 3 states:

> A. ***<u>If an organization decides to discontinue</u> providing training to nursing home workers***, the organization must notify the board as soon as practicable and in any event within five business days.
> B. Within ten business days of notifying the board under item A, the ***organization must confirm to the board that:***
> (1) all nursing home workers who were trained by the organization received certifications of completion as prescribed by the board and follow-up materials;
> (2) all nursing home workers who were trained by the organization were informed that the organization would no longer be available to respond to inquiries related to nursing home workforce standards;
> ***(3) all nursing home workers who had upcoming trainings scheduled with the organization were informed of the organization's decision to no longer provide trainings; and***

[12] Proposed rule part 5200.2040, subp. 2.

> ***(4) all nursing home employers have received the proper documentation of worker attendance at trainings.***[13]

The plain, clear language covers situations where the worker training organization takes an affirmative action and *chooses to discontinue providing training* to nursing home workers. The proposed language continues by stating what required actions the worker training organization must then undertake after it has decided to discontinue training nursing home workers. Subpart 3's language does not cover situations where the Board has denied certification or revoked it. In denial and revocation situations, the worker training organization is desiring to continue training nursing home workers, but the Board has denied or revoked that ability—the worker training organization is not "deciding" to discontinue training nursing home workers.

To clarify this situation, it is recommended an additional subpart item be added to subpart 2 to read: "(E) If an application is denied or a certification is revoked, the applicant must comply with part 5200.2040, subpart 3, item B." An alternative to this language may also include making a revision to subpart 3, item (A) to have it read: "If an organization's certification renewal is denied or revoked, or if an organization decides to discontinue providing training to nursing home workers, the organization must notify the board as soon as practicable and in any event within five business days." In each of these revisions to the proposed rule language, the two distinct situations of (1) the Board denying a worker training organization renewal certification application or revoking it, and (2) the worker training organization simply choosing to discontinue training nursing home workers would be covered by the proposed rules and provide clear requirements for the worker training organization to perform before it is released from its obligations.

These revisions protect nursing home providers from not receiving the necessary and statutorily required compliance information about worker attendance resulting from the worker training organization's conducted training events. It also notifies nursing home providers who have previously scheduled training with the now, no longer certified worker training organization to be aware of the change and permit the nursing home provider to arrange for a different worker training organization to conduct the proposed rules' required training.

Without addressing this issue, the Board would be permitting a worker training organization that has its certification renewal denied or revoked from providing the nursing home providers with the necessary information it needs to comply with the statutes governing the Board. Clearly, the Board does not intend to put nursing home providers at risk of being out of compliance with its statutes by failing to address this concept. To do so would be absurd.

Conclusion

The Board has failed to fully understand the potential consequences of moving forward with an unfunded mandate, including the impacts on providers, consumers, other health care providers and local governments. While we acknowledge that this is a complex and dynamic analysis we are requesting, there is too much at stake to proceed as is. In the worst scenario, more nursing homes will

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[13] Proposed rule part 5200.2040, subp. 3 (emphasis added).

close because of these proposed rules, thereby reducing seniors' access to care in their local communities. Individuals will be forced to choose between going without needed skilled care or relocating to a nursing home farther away—if an opening is available. Neither of these options support our goal of ensuring that every senior has access to safe, quality care when they need it in their home communities.

We believe that this is an inflection point in Minnesota, and we have a powerful opportunity to come together to reaffirm the state's commitment to adequately funding senior care so that caregivers can earn family-sustaining wages and seniors have access to care in all the places we call home. But this cannot be achieved by ignoring the complex and interwoven factors discussed in this comment letter.

We urge the Board to withdraw these proposed rules and conduct the analyses that are not only required by law, but necessary to ensure that the impacts of these proposed rules are well understood. In the alternative, we ask that these issues be resolved in a public hearing.

Thank you for considering these comments and this request for public hearing.

Sincerely,

Kari Thurlow

Kari Thurlow,
President and CEO

RECEIVED
By: OAH on 9/24/2024

Kimberly Smith Attachment

Submitted Electronically
9/23/2024.

Leah Solo, Executive Director
Nursing Home Workforce Standards Board
443 Lafayette Rd. N., St. Paul
MN 55155

Reference: Comment to Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 – 5200.2050, Revisor's ID Number R-04870

Dear Executive Director Solo,

Thank you for the opportunity to comment on the proposed holiday pay rule. I am writing to respectfully urge the Nursing Home Workforce Standards Board (the Board) to reconsider this mandate, as it poses significant challenges to nursing homes across Minnesota, especially as it remains an unfunded obligation.

To begin, Morris Health Services has always supported the fair compensation of our employees, and we recognize the importance of a sustainable wage. However, it is the duty of our elected officials to ensure that any new financial burdens placed on healthcare providers, such as this holiday pay standard, are accompanied by proper funding. Nursing homes, which already face considerable financial pressures, cannot absorb these costs without support. Despite our advocacy for wage increases in the past legislative session through HF3391/SF4130, the proposed funding for employee compensation was not approved, leaving us in a dire position.

The holiday pay rule will require nursing homes to designate eleven holidays where employees must be paid time and a half. While the option to substitute four holidays with employee consent is allowed, the reality of implementing this in a short timeframe, with the rule likely only approved by November 2024 and effective January 1, 2025, creates immense logistical and financial strain. This rule was developed without fully considering its impact on nursing homes, particularly those already operating with thin margins in a labor market that continues to shrink.

Unfunded Mandate:
This rule represents a significant unfunded mandate. If nursing homes are required to implement time and a half pay for these holidays, there must be corresponding funding allocated. For example, in our facility, this would mean an additional $ 46,337.00 in holiday pay costs for 2025. Given the constraints we already face, these costs would force us to make difficult decisions about cutting back on other critical expenses—jeopardizing the quality of care we provide to our residents.

Financial Challenges:
Our facility, like many others in Minnesota, cannot simply adjust our rates to account for this increase in labor costs. Unlike businesses in other sectors, we are bound by Medicaid, Medicare, and private pay rates that are determined well in advance and do not account for new mandates. The Medicaid and CHIP Payment and Access Commission has reported that Medicaid only covers 86% of nursing home costs, leaving us at a financial disadvantage even before this new rule. Without state funding to support this increase, nursing homes may be forced to close their doors or reduce services, further limiting access to essential care for Minnesota's elderly population.

Operational and Implementation Challenges:
The timeline for implementation is highly problematic. Our organization would have less than two months to finalize a holiday schedule for 2025, requiring employee approval and major adjustments to payroll and scheduling. The Board's approach does not take into account the practical realities of running a nursing home. Additionally, we already offer holidays such as New Year's Day, Easter Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day , and adjusting these in accordance with the state holiday schedule will cause confusion and additional strain on our operations.
Impact on Care Access:
Ultimately, this rule places the financial burden on nursing homes without ensuring that our seniors will continue to receive the care they need. Many facilities, particularly those in rural areas like ours, are already struggling with staffing shortages and rising costs. Adding these holiday pay requirements without the necessary funding will put us in an impossible position, forcing us to make difficult choices that may include reducing services, limiting admissions, or in the worst-case scenario, closing our doors altogether.

I respectfully ask that the Board reconsider the holiday pay rule and work with the Legislature to secure adequate funding before imposing any new financial requirements on nursing homes. Without this support, the proposed rule will do more harm than good, particularly to the vulnerable populations we serve.

Thank you for considering my comments. I also request that a public hearing be held to further discuss this matter and its far-reaching consequences.

Sincerely,
Kimberly Smith Administrator
Morris Health Services

RECEIVED
By: OAH on 9/25/2024
Sharlene Knutson Attachment

Leah Solo, Executive Director
Nursing Home Workforce Standards Boards
443 Lafayette Rd. N., St Paul, MN 55155

Reference: Comment to Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 – 5200.2050, Revisor's ID Number R-04870

Dear Executive Director Solo:

Thank you for the opportunity to comment on the proposed holiday pay rule and I beg the Nursing Home Workforce Standards Board to reconsider this rule.

I am the administrator at McIntosh Senior Living, in McIntosh, MN. We are a non-profit, 45 bed skilled nursing home. We are in northern Minnesota. In 2023 our county of Polk had 2 skilled nursing homes close operations. McIntosh Senior Living is turning away people as we are full and have a waiting list of 15 people.

We cannot afford to have more mandates. Especially mandates that are not funded. January 1, 2025, the nursing home industry will have the temporary rate add-on of $12.35 removed from our reimbursements. For my facility that means that I will no longer receive $202,484 in reimbursement for operations and now you are going to add approximately $35,000 for paid holiday. On top of that since 2020 our yearly food budget has had an average increase of 19.5%. That is just our food and not including other increased supply costs. Then the employees deserve to get paid for the Quality Care they deliver. We currently provide 7 holidays at double time. How do I change this. My employees especially did not agree that Easter was not included in this plan. Do Christian Holidays not count any longer?

The proposed rule mandates that a nursing home employee who works any of the specified eleven holidays is paid a minimum of time-and-one-half their regular hourly wage for all hours worked during the holiday. I oppose the proposed rule language and request a public hearing

McIntosh Senior Living diligently strives for Quality Care by providing a life-sustaining wage. It is the responsibility of the states elected officials to see that the nursing home industry is funded and invested in. That is why nursing homes like mine have called for funding to raise wages year after year. Specifically, during this past legislative session, HF3391/SF4130 would have provided funding to nursing homes for employee compensation via a rate increase, and at higher compensation levels than proposed by the Board. To my surprise and disappointment, this appropriation was not passed into law.

Our nursing home runs fairly and all employees are given cost of living raises and yearly performance raises. What is frustrating for me is mandating all facilities to do the same and not taking into consideration the location as well as how they perform. If you have three children and one breaks a lamp, do you punish all three children? NO! "One size fits all" does not work in our industry. That is what is happening with this proposed mandate and it is ridiculous that my facility is being mandated. We are a 5-star facility with great MN Dept of Health surveys and resident satisfaction surveys. We are being punished because other facilities are not operating well or treating their employees unfairly.

The Board fails to consider, or worse ignores, critical facts and impacts in the development of these standards and moving forward with the standards as proposed could recklessly put the access of essential nursing home care in jeopardy for communities all over Minnesota. First, Minnesota is and will continue to experience a decline in workers1. Additionally, the Board has completely ignored the financial impacts to providers, including the limitations of state funding for nursing homes, such as a nearly 2-year delay in the recognition of new costs and the additional restrictions created by our rate equalization law. Most disappointingly and critically, the Board's standard fails to guarantee access to quality care for Minnesota's seniors and is likely to decrease access to services available to our state's older adults.

Also, the Medicaid and CHIP Payment and Access Commission has reported that current basic Medicaid rates only cover 86% of nursing home costs. We must ensure nursing homes are reimbursed for the true cost of the care they provide.

The effective date of January 1, 2025, for this rule is very problematic for our organization. In addition to the cost of adding new holidays, we currently offer some paid holidays that are not official state holidays. Based on the expected timeline for approval of this rule, we will have less than two months to receive feedback from employees and implement a new holiday schedule for 2025. Once that is done, we will have to adjust payroll practices and scheduling policies to implement the new holiday schedule. The Board's unwillingness to consider a more realistic implementation date shows that they do not understand provider operations and the challenges they face in implementing major changes in an unrealistic time frame.

In summary, this proposed standard requires nursing homes to pay holiday wages that are not currently part of reimbursement rates, meaning in simple terms it is an unfunded mandate. Tying the hands of providers by forcing employees to accept specific holidays will not achieve its intended impact. Such impacts will be directly felt by residents, their families, and communities as a result. Accordingly, we are opposed to this entire rule and request its disposition be resolved during a public hearing.

Thank you for your consideration.

Sincerely,

Sharlene Knutson, Administrator / Licensed Social Worker
McIntosh Senior Living, Nursing Home
McIntosh, MN

RECEIVED
By: OAH on 9/25/2024

Kimber Wraalstad Attachment

North Shore HEALTH
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Submitted Electronically via
Minnesota Office of Hearings eComments

September 25, 20024

Leah Solo, Executive Director
Nursing Home Workforce Standards Board
443 Lafayette Rd. N.
St. Paul MN 55155

RE: Comment to Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 – 5200.2050, Revisor's ID Number R-04870

Greetings Ms. Solo:

On behalf of North Shore Health, I would like to offer our comments regarding the proposed holiday pay rule. As with the proposed minimum nursing home wage standards, I respectfully urge the Nursing Home Workforce Standards Board (the Board) to reconsider this misguided standard and rule.

North Shore Health is a 37-bed Skilled Nursing Facility (Care Center), a 16-bed Critical Access Hospital, a Home Health Agency and an Ambulance Service, all located in Grand Marais. We employ approximately 130 employees equating to 97 FTEs. North Shore Health is continuing to face a workforce shortage. We have developed the On-Track Nurse Aide training program, provided scholarships, used a number of temporary agency staff and are now actively involved in recruitment from other countries using a variety of immigration options. Due to our workforce shortage, we are currently limiting our census in the Care Center to 28 residents. North Shore Health is the only skilled long-term care facility in Cook County in addition there is not an Assisted Living facility in Cook County. Our facility is 60 miles from the next closest skilled nursing facility, the Veteran's Home, in Silver Bay. Beyond the Veteran's Home in Silver Bay, the next closest skilled nursing facility is 84 miles away in Two Harbors. North Shore Health serves a small, remote population. Although it is critical that we continue to provide healthcare services to our community, our volumes are such that it is difficult for us to sustain ourselves financially through operations alone without the assistance of community support via the property tax levy. Even with the tax levy, North Shore Health experienced a net loss in 2023 of $(1,139,000).

As I stated in my comments regarding the wage standards, North Shore Health has always supported our Team Members and their ability to earn a livable wage with **fair benefits**. North Shore Health currently provides eight holidays at double time and we pay 85% of the employees' health insurance premium and 7.5% toward PERA retirement. The state legislature has the ultimate responsibility to provide the funding necessary to support this investment in our employees. For years, nursing homes such as North Shore Health have requested funding to support the increase in the wages of our Team Members. In the 2024 legislative session, HF3391/SF4130 would have provided a rate increase for funding to allow nursing homes to address employee wages at even higher compensation levels than proposed by the Workforce Standards Board. Unfortunately, HF3391/SF4130 was not passed into law.

I continue to be concerned that the Workforce Standards Board is failing to consider or perhaps purposely ignoring the impact of these standards on the ability of skilled nursing facilities throughout Minnesota to provide essential nursing home care. The Workforce Standards Board has completely ignored the financial and operational impacts to providers.

This proposed rule is an unfunded mandate. Without action by the Legislature and Governor, providers such as North Shore Health will need to consider our ability to continue to provide skilled nursing services. Some providers may have the ability to reallocate funds from other areas to meet this mandate. Unfortunately, some providers will not have that option and will discontinue providing services. It seems that the direct result of the work by the Workforce Standards Board will decrease access to services available to Minnesota's seniors.

I want to focus on my serious concerns about the proposed holiday pay standard on implementation challenges and financial challenges

- Implementation challenges

The effective date of January 1, 2025, (60 days) for this rule is very problematic. In addition to the cost of adding new holidays, we will have less than two months to receive feedback from employees and implement a new holiday schedule for 2025. We will have to adjust payroll practices and scheduling policies to implement the new holiday schedule. Our holiday schedule practices in included in our Collective Bargaining Agreements (CBA). How do we implement something in less than 60 days? The Workforce Standards Board's unwillingness to consider a more realistic implementation date reiterates their lack of understanding of provider operations and the challenges.

North Shore Health currently provides eight holiday and we pay double time for those holidays. Do we reduce our holiday pay to time and a half in violation of the (CBA)? Do we continue to provide the existing holidays at double time and add new employees at time and a half.

- **Financial challenges**

With the equalization of Medicaid and private pay rates, state funded managed care programs for seniors and Medicare, all of our rates are controlled by the state and federal governments. We cannot "just raise our prices" to cover both existing and new expenses. With this control over our rates, the legislature must ensure nursing homes are reimbursed for the true cost of the care we provide.

North Shore Health's nursing facility rates for residents covered by Medicaid and Private Pay Rates are determined based upon the allowable costs we incurred between 15 to 27 months ago. The Workforce Standards Board is asking North Shore Health to do the impossible – pay our Team Members without any additional funding! This rule also impact only Nursing Home employees yet we are one organization, Hospital, Home Care and Ambulance. The easy response by the Workforce Standards Board would be to provide the additional holidays to all employees. Unfortunately, our insurance contracts with private insurers for hospital and ambulance services will not increase our reimbursement to cover this cost.

The Care Center at North Shore Health had a loss from operations in 2023 of $(2,092,339). Additional unfunded expenses continue to jeopardize our already precarious operations and the viability of our organization.

> **This is an unfunded mandate**. With existing losses, it would be impossible to reduce current expenses to offset the additional expense. Our ability to continue to operate the Care Center is questionable. This would result in no available skilled nursing facility services in Cook County, a county where 31% of our population is over the age of 65.

I reiterate, **the holiday pay standard is an unfunded mandated**. These proposed standards will not have the intended result of increasing nursing home caregivers. Rather, it will continue to increase the financial and operational challenges facing facilities throughout Minnesota and could result in the reduction of available services. As a result, those seniors and community members who need our care will be harmed. North Shore Health is opposed to this entire rule and request its disposition be resolved during a public hearing.

Should you require additional information or have any questions about our comments, please contact me at 218-387-3260 or via email at Kimber.wraalstad@northshorehealthgm.org.
Thank you for your consideration of my comments.

Sincerely,

Kimber L Wraalstad

Kimber L. Wraalstad, FACHE
CEO/Administrator

RECEIVED
By: OAH on 9/25/2024

Submitted Electronically

September 25th, 2024

Leah Solo, Executive Director
Nursing Home Workforce Standards Board
443 Lafayette Rd. N., St. Paul
MN 55155

Reference: Comment to Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 – 5200.2050, Revisor's ID Number R-04870

Dear Executive Director Solo:

Thank you for the opportunity to comment on the proposed holiday pay proposed rule. I respectfully urge the Nursing Home Workforce Standards Board (the Board) to reconsider this misguided standard and rule.

To be clear, Ebenezer has always supported our workers and their ability to earn a life-sustaining wage. However: it is the responsibility and obligation of our state's elected officials to fund these investments. That is why nursing homes like mine have called for funding to raise wages year after year. Specifically, during this past legislative session, HF3391/SF4130 would have provided funding to nursing homes for employee compensation via a rate increase, and at higher compensation levels than proposed by the Board. To my surprise and disappointment, this appropriation was not passed into law.

Absent leadership and support from the Legislative and Executive Branches, this proposed rule is an unfunded mandate that forces providers like me to afford these paid holidays and their wage rates by deferring funding to other needs that are critical to providing quality care for the seniors we serve.

The Board fails to consider, or worse ignores, critical facts and impacts in the development of these standards and moving forward with the standards as proposed could recklessly put the access of essential nursing home care in jeopardy for communities all over Minnesota. First, Minnesota is and will continue to experience a decline in workers[1]. Additionally, the Board has completely ignored the financial impacts to providers, including the limitations of state funding for nursing homes, such as a nearly 2-year delay in the recognition of new costs and the additional restrictions created by our rate equalization law. Most disappointingly and critically, the Board's standard fails to guarantee access to quality care for Minnesota's seniors and is likely to decrease access to services available to our state's older adults.

I want to focus on my serious concerns about the proposed holiday pay standard, specifically:

1. The financial burden of additional holidays: The creation of additional paid holidays without proper funding forces our facility to absorb increased wage costs. Without additional

[1] Minnesota State Demographer, 2016. https://mn.gov/admin/assets/demographic-considerations-planning-for-mn-leaders-msdc-march2016_tcm36-219453.pdf

reimbursement from state or federal sources, we will have to defer resources from other essential care services, compromising the quality of care for our residents.

2. Inadequate timeline for implementation: The proposed January 1, 2025, implementation date provides insufficient time for facilities like ours to adjust payroll and holiday schedules. We currently offer several paid holidays not recognized as state holidays, and reorganizing these schedules, collecting employee feedback, and updating payroll systems in such a short time frame will be operationally disruptive.

3. Impact on workforce retention and recruitment: In an environment where wage inflation and workforce shortages are already critical issues, mandating additional holiday pay will further strain our ability to compete for and retain qualified staff. This will negatively impact our capacity to provide consistent, high-quality care to our residents.

My name is Kayla Luraas, and I have been the Campus Administrator at Meadows on Fairview in Wyoming, MN, for the past two years. Meadows on Fairview consists of a 14-bed transitional care unit, a 51-apartment assisted living facility, and a 32-apartment subsidized independent living facility. We are dedicated to serving our residents with the highest level of care and dignity.

While we strongly support fair wages for our workers, we believe it is essential that the necessary funding for such initiatives be provided upfront by our state's elected officials. The current proposed holiday pay rule, unfortunately, presents an unfunded mandate that puts significant financial strain on facilities like ours. Without corresponding financial support from state or federal sources, it becomes increasingly challenging to maintain operational viability while delivering quality care to the seniors we serve.

Unfunded Mandate

The creation of additional holidays without funding would force us to make difficult decisions about our budget, potentially deferring funding from other critical areas necessary for maintaining high-quality care. For our facility, adding these new holidays in 2025 would result in a significant increase in costs that we cannot bear without additional financial support. The state and federal government must ensure that nursing homes are reimbursed at levels that allow us to sustain this care. In the case of our facility, we will need to add 40 holidays in 2025 at an estimated new cost of $8,000.

Financial Challenges

As a nursing facility, our Medicaid and Private Pay Rates are determined based on allowable costs incurred between 15 to 27 months prior. Due to the auditing process, it is impossible for us to know what our rates will be until the Minnesota Department of Human Services calculates them just 45 days before January 1 of each year. This creates a significant challenge in planning and budgeting for wage increases associated with the proposed holiday pay rule.

In addition, our facility is part of a larger campus that includes assisted living and subsidized independent living services, meaning that the financial impact of this mandate is not limited to our nursing home but extends across all services we provide. This multifaceted environment increases our financial exposure, as the costs associated with the holiday pay rule affect every department on our campus.

With the equalization of Medicaid and private pay rates, along with state-funded managed care programs for seniors (MSC+ and MSHO) and Medicare, nearly all of our funding is controlled by the state and federal governments. Unlike businesses in other industries, we are unable to simply raise prices to cover the increased costs associated with new wage mandates. This leaves us with very few options to remain financially afloat, such as deferring critical facility updates or even limiting the services we provide.

If these measures are taken, the ripple effect could be felt throughout our local healthcare system. The inability to absorb new wage costs could result in reduced capacity at our facility, which in turn could impact the ability of hospitals to discharge patients due to a lack of available transitional care services. This would increase strain on acute care systems and ultimately harm patients in need of post-acute care.

Implementation Challenges

The proposed implementation date of January 1, 2025, does not provide sufficient time for our organization to plan and adapt. We will need more time to gather employee feedback and adjust payroll practices accordingly. Rushing these changes could result in operational disruptions that would negatively impact our staff and residents.

In summary, the proposed holiday pay standard requires urgent reconsideration. Imposing this rule without addressing the need for corresponding funding will harm not only nursing facilities but also the seniors and communities we serve. I urge the Board to carefully evaluate the financial and operational impacts of this proposal before moving forward.

Thank you for considering my comments and request for public hearing.

Sincerely,

Kayla Luraas

Campus Administrator

Meadows on Fairview

RECEIVED
By: OAH on 9/25/2024
Cate Davis Attachment

Submitted Electronically

September 24, 2024

Leah Solo, Executive Director
Nursing Home Workforce Standards Board
443 Lafayette Rd. N., St. Paul
MN 55155

Reference: Comment to Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 – 5200.2050, Revisor's ID Number R-04870

Dear Executive Director Solo:

Thank you for the opportunity to comment on the proposed holiday pay proposed rule. Avera Health respectfully urges the Nursing Home Workforce Standards Board (the Board) to reconsider.

To be clear, Avera Health has always supported our workers and their ability to earn a life-sustaining wage. However: without additional financial support, it is difficult to comply with new staffing and pay regulations. That is why nursing homes like mine have called for funding to raise wages year after year. Specifically, during this past legislative session, HF3391/SF4130 would have provided funding to nursing homes for employee compensation via a rate increase, and at higher compensation levels than proposed by the Board. To our disappointment, this appropriation was not passed into law.

Absent increased financial support from the Legislative and Executive Branches, this proposed rule is an unfunded mandate that forces providers like us to afford these paid holidays and their wage rates by deferring funding to other needs that are critical to providing quality care for the seniors we serve.

The Board fails to consider critical facts and impacts in the development of these standards and moving forward with the standards as proposed could threaten access of essential nursing home care in jeopardy for communities all over Minnesota.

Unfunded mandate

The statute establishing this Board and the creation of standards also made clear that new standards should be funded with adequate funding before becoming effective. If the Board is going to require providers to pay time and a half for additional holidays, then lawmakers must take steps to fund the increased wage costs upfront and before the standard can take effect. Nursing homes cannot shoulder the burden these standards alone, especially when the state and federal governments are responsible for providing a large proportion of the funds to them.

Financial challenges

In a time of record wage inflation and market competition for workers, we cannot compete with retail, food service, or other industries, particularly given the unique role that our state and federal government partners have in supporting wages through Medicare and Medicaid. **The**

Board is asking nursing homes to do the impossible – pay staff more without any additional funding.

The Medicaid and CHIP Payment and Access Commission has reported that current basic Medicaid rates only cover 86% of nursing home costs.[1] To ensure sustainability, nursing homes must be reimbursed for the true cost of the care they provide.

Implementation challenges

The effective date of January 1, 2025, for this rule is troubling for our organization. In addition to the cost of adding new holidays, we currently offer some paid holidays that are not official state holidays. Based on the expected timeline for approval of this rule, we will have less than two months to receive feedback from employees and implement a new holiday schedule for 2025. Once that is done, we will have to adjust payroll practices and scheduling policies to implement the new holiday schedule. Please consider alternative implementation dates.

In summary, this proposed standard requires nursing homes to pay holiday wages that are not currently part of reimbursement rates, meaning in simple terms it is an unfunded mandate. Tying the hands of providers and employees will not achieve its intended impact. Such impacts will be directly felt by residents, their families, and communities as a result. Accordingly, we are opposed to this proposed rule.

Thank you for considering our comments.

Sincerely,

Cate Davis
Public Policy Manager | Avera Health
3900 W Avera Drive
Sioux Falls, SD 57108

[1] Medicaid and CHIP Payment and Access Commission, (2023, January). Estimates of Medicaid Nursing Facility Payments Relative to Costs. https://www.macpac.gov/wp-content/uploads/2023/01/Estimates-of-Medicaid-Nursing-Facility-Payments-Relative-to-Costs-1-6-23.pdf

RECEIVED
By: OAH on 9/25/2024
Brian Elliott Attachment

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SEIU Minnesota State Council

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Workers United

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Regional Political Coordinator

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September 25, 2024

Leah Solo, Executive Director
Nursing Home Workforce Standards Board
Department of Labor and Industry
443 Lafayette Rd N
St Paul, MN 55155

RE: Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 - 5200.2050

Director Solo,

I am writing on behalf of the Service Employees International Union (SEIU) Minnesota State Council and our Local Unions in Minnesota in support of the rules proposed by the Nursing Home Workforce Standards Board ("Board") relating to holiday pay for nursing home workers, the certification of worker organization to train nursing home workers on rules established by the Board, and on worksite posting requirements.

These rules meet the statutory requirements governing the Board as follows:

- Under Minnesota Statutes 181.214 Subd 1, the Board is required to, "establish certification criteria that a worker organization must meet in order to be certified and provide a process for renewal of certification upon the board's review of the worker organization's compliance with this section."
    - The proposed Minnesota Rules Part 5200.2030 lay out the criteria as reflected in the requirements of worker organizations in Minnesota Statutes 181.211 and the ability "to provide: (1) effective, interactive training on the information required by this section; and (2) follow-up written materials and responses to inquiries from nursing home workers in the languages in which nursing home workers are proficient." Proposed Minnesota Rules Part 5200.2030 additionally provides for an application process that ensures the Board has the information needed to judge whether a worker organization meets the certification criteria, as well as a renewal process referenced above.
    - Proposed Minnesota Rules Part 5200.2040 - 5200.2050 further establish the processes by which the Board will review applications and either approve, deny, or revoke certification, and by which certified worker organization may discontinue training, as well as the means by which the Board will make a list of certified worker organization available to nursing home employers to facilitate those employers meeting their requirements under Minnesota Statutes 181.214 Subd 6.

- Under Minnesota Statutes 181.215 Subd 2, the Board "must adopt rules under section 14.389 specifying the minimum content and posting requirements," which Minnesota Statutes 181.215 Subd 1 must include, "informing nursing home workers of the rights and obligations provided under sections 181.211 to 181.217 of applicable minimum nursing home employment standards and local minimum standards and that for assistance and information, nursing home workers should contact the Department of Labor and Industry."
    - Proposed Minnesota Rules Part 5200.2020 provide for such posting in a manner consistent with other worksite postings under Minnesota Statutes Chapters 177 and 181
    - Proposed Minnesota Rules Part 5200.2020 further requires that such notice spell out the rights and obligations of nursing home workers to:
        - Be protected against retaliation under Minnesota Statutes 181.216;
        - Contact the Department of Labor and Industry as referenced above;
        - Attend trainings on rights and obligations provided under sections 181.211 to 181.217;
        - Be paid for such training and receive reasonable travel expenses as provided in Minnesota Statutes 181.213 Subd 7; and
        - Receive notices in their chosen language upon request as provided in Minnesota Statutes 181.215 Subd 1(b).
- Under Minnesota Statutes 181.213 Subd 2(a), the Board "must seek to adopt minimum nursing home employment standards that meet or exceed existing industry conditions for a majority of nursing home workers," and that "Except for standards exceeding the threshold determined in paragraph (d), initial employment standards established by the board are effective beginning January 1, 2025…"
    - The proposed Minnesota Rules Part 5200.2010 establishes such a nursing home standard that will exceed existing conditions for a majority of nursing home workers, and will do so by the effective date of January 1, 2025 referenced above.
    - This proposed rule also allows nursing home employers and their workers to jointly decide to substitute up to four of the holidays defined in proposed Minnesota Rules Part 5200.2000, as long as such decision is made in the previous calendar year. In its August 8, 2024 meeting, the Board discussed the short timeline this would allow for changes to 2025 holidays and the possibility of allowing changes to the holiday list for the first year of the rule to happen in that same calendar year. However, rather than move that proposal, the employer representatives on the board chose to move a delay in the implementation date by one year to January 1, 2026. This was voted down by the Board, and would have resulted in no standard taking effect on January 1, 2025 as provided in statute above.
    - Furthermore, this standard does not exceed the threshold determined in Minnesota Statutes 181.213 Subd 2(d), and so was correctly determined by the Board to make implementation "contingent upon an appropriation" under Statutes 181.213 Subd 2(c). Despite several comments by employers on this proposed rule that reference only Minnesota Statutes 181.213 Subd 2(d)(3), Minnesota Statutes 181.213 Subd 2(d)(1)-(2) lay out how to compute the referenced "threshold" and how to determine if a standard exceeds such threshold.
        - Minnesota Statutes 181.213 Subd 2(d)(1) specify that the threshold is determined using "the statewide ***average*** wage rates…and benefit rates" from the annual Medicaid cost reports, and Minnesota Statutes 181.213 Subd 2(d)(2) establishes the data to consider for comparison with that threshold. It is the difference

between these two numbers that is statutorily required to be compared against the forecasted increase in the equivalent wage and benefit rates to determine if an appropriation is required.

- The existing Values Based Reimbursement (VBR) system is the mechanism by which employers are paid by the state when they voluntarily decide to increase the wages and benefits of their workers. The contingent rule-making authority granted to the Board clearly illustrates the belief of the legislature that some standards increasing compensation for nursing home workers would not require any additional appropriation and could be sufficiently funded by the VBR system. The proposed holiday pay rule meets the criteria established by the legislature and can go into effect without further legislative action.
- The Department of Human Services (DHS) used established principles for legislative fiscal notes to compute the cost of this proposed standard. These principles are often the source of consternation for advocates of employer, workers, or any other issue before the legislature, but the standardization of these principles, as overseen by the Legislative Budget Office allows for the apples-to-apples comparison of similar proposals. In this instance, the statute specifies the use of statewide average data, which comports with the established principles for fiscal notes, and does not require an analysis of the impact on each of the state's approximately 340 nursing homes reimbursed under Minnesota Statutes Chapter 256R. So while it is common to hear complaints about the content of fiscal notes, it is also common for the legislature to use the information in those fiscal notes as the basis for their decision making, and is the correct analysis to be employed in this instance by DHS in determining that this proposed employment standard does not exceed the forecasted increase in nursing home worker wages and benefits.

In conclusion, the proposed rules governing holiday pay, certification of worker organizations, and notice posting requirements both meet the requirements of Minnesota Statutes 181.211 to 181.217, but are necessary as drafted in order to meet those requirements. As such, the SEIU Minnesota State Council and SEIU Local Union in Minnesota support the rules as proposed.

Thank you for your consideration.

Sincerely,

Brian Elliott, Executive Director
SEIU Minnesota State Council

40213 Minnesota Nursing Home Workforce Standards Board Notice of Intent to Adopt Expedited Rules

Closed Sep 25, 2024 · Discussion · 16 Participants · 1 Topics · 16 Answers · 0 Replies · 1 Votes

16	1	16	0	1
PARTICIPANTS	TOPICS	ANSWERS	REPLIES	VOTES

SUMMARY OF TOPICS

SUBMIT A COMMENT

16 Answers · 0 Replies

Important: All comments will be made available to the public. Please only submit information that you wish to make available publicly. The Office of Administrative Hearings does not edit or delete submissions that include personal information. We reserve the right to remove any comments we deem offensive, intimidating, belligerent, harassing, or bullying, or that contain any other inappropriate or aggressive behavior without prior notification.

Emily Kollar · Citizen · (Postal Code: unknown) · Sep 03, 2024 4:52 pm

0 Votes

Thank you for reviewing and considering my comments attached.

Kayla Linn · Citizen · (Postal Code: unknown) · Sep 05, 2024 9:52 pm

0 Votes

Thank you for the opportunity to provide comments!

Brian Bernander · Citizen · (Postal Code: unknown) · Sep 16, 2024 4:15 pm

0 Votes

See attachment

Danielle Olson · Citizen · (Postal Code: unknown) · Sep 17, 2024 4:37 pm

0 Votes

Thank you for considering my comments.

James Newbrough · Citizen · (Postal Code: unknown) · Sep 18, 2024 8:56 am

0 Votes

Thank you for the opportunity to have input into this very important decision.

Mac Harnisch · Citizen · (Postal Code: unknown) · Sep 20, 2024 12:45 pm
0 Votes

Thank you for the opportunity to submit comments.

Todd Bergstrom · Citizen · (Postal Code: unknown) · Sep 24, 2024 8:22 am
0 Votes

Attached are Care Providers of Minnesota's comments. Thank you for the opportunity to comment.

Blaine Gamst · Citizen · (Postal Code: unknown) · Sep 24, 2024 10:47 am
0 Votes

Thank you for the opportunity to submit comments.

STEVEN CHIES · Citizen · (Postal Code: unknown) · Sep 24, 2024 1:43 pm
0 Votes

Please see my comments. Thank you.

Mark Schulz · Citizen · (Postal Code: unknown) · Sep 24, 2024 2:00 pm
0 Votes

Thank you for the opportunity to submit comments to these proposed rules. Attached is LeadingAge Minnesota's comment letter.

Kimberly Smith · Citizen · (Postal Code: unknown) · Sep 24, 2024 2:39 pm
1 Votes

Thank you, attached it the letter for the purposed .

Sharlene Knutson · Citizen · (Postal Code: unknown) · Sep 25, 2024 10:59 am
0 Votes

Thank you for taking the time to consider my concerns. Attached is the letter.

Kimber Wraalstad · Citizen · (Postal Code: unknown) · Sep 25, 2024 1:34 pm
0 Votes

Please see the attached comment letter regarding the proposed rules. Thank you for this opportunity.

Kayla Luraas · Citizen · (Postal Code: unknown) · Sep 25, 2024 2:42 pm
0 Votes

Thank you for the opportunity to share my comments. Please see attached.

Cate Davis · Citizen · (Postal Code: unknown) · Sep 25, 2024 3:28 pm
0 Votes

Thank you for the opportunity to share comments. Please see the attached.

Brian Elliott · Citizen · (Postal Code: unknown) · Sep 25, 2024 3:59 pm
0 Votes

Thank you for your attention to the attached comments.

From:	Charter
To:	RULES, DLI (DLI)
Subject:	Nursing home ruling
Date:	Monday, August 26, 2024 11:31:27 AM

[You don't often get email from nancymoline@charter.net. Learn why this is important at https://aka.ms/LearnAboutSenderIdentification]

This message may be from an external email source.
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What is wrong with you people. You think delimiting all these requirements are going to help nursing home get good worker? I do not want to live in a nursing home with this type of quality people. Pay these people the same as a hospital and you will have no problem finding workers. Step up the state of Minnesota and pay these people what they are worth. They are in charge of peoples lives and should be paid accordingly. Get you head out of your asses.
Sent from my iPhone

From: Chelsa Nelson
To: Afsharjavan, Ali (DLI)
Subject: Nursing Home Workers Comment
Date: Friday, September 6, 2024 12:02:36 PM

You don't often get email from chelsan@ufcw663.org. Learn why this is important

This message may be from an external email source.
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Ali,

I am just writing to let you know that I am in favor of the proposed rules which includes a new minimum standard of time and one half for all recognized holidays for Nursing Home workers.

In solidarity,

Chelsa Nelson (She/Her)
Director of Representation
UFCW Local 663
6160 Summit Drive North Suite 600
Brooklyn Center, MN 55430
Email: chelsan@ufcw663.org
Office: 763-525-1500
Cell: 218-241-1348
https://linktr.ee/UFCW663

From:	John Linn
To:	RULES, DLI (DLI)
Subject:	Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 - 5200.2050.
Date:	Wednesday, September 25, 2024 12:22:54 PM
Attachments:	image001.png

Date:	September 25, 2024
OAH Docket Number:	28-9001-40213
Presiding Judge:	Administrative Law Judge Joseph Meyer
Comment Period:	August 26, 2024 through 4:30 p.m. on September 25, 2024

Re: Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements; Minnesota Rules, Part 5200.2000 - 5200.2050.

I am the Executive Director at St. Benedict's Care Center (HFID 00774) in St. Cloud, and Sartell Care Center (HFID 31401) in Sartell.

The proposed rule mandates that a nursing home employee who works any of the specified eleven holidays is paid a minimum of time-and-one-half their regular hourly wage for all hours worked during the holiday. I oppose the proposed rule language and request a public hearing. Enforcing additional costs on our Nursing Home without proper ways to reimburse is not appropriate and will lead to additional delays in care as well as inequities across our senior living campus.

- The mandated eleven state holidays are unfunded. Minnesota's Medicaid nursing facility payment system uses a facility submitted cost report. After auditing, the Minnesota Department of Human Services (DHS) January establishes Medicaid Rates on January 1 that reflect costs incurred 15 to 27 months prior.

This timeline is far too tight.

- Nursing facilities engage in annual budgeting processes that begin a full year in advance. The mandated state holidays are an unanticipated change and are an unplanned expenditure.

Both of our Skilled Nursing facilities have closed beds or units, and any additional unplanned increase in costs will lead us to consider to permanently close wings or other areas where we currently serve residents. At our St. Cloud SNF, we currently are operating only 3 of 7 total units, with 101 of 198 total beds laid away. Access to care will continue to shrink, increasing burden on our hospitals and communities.

- The January 1, 2025 effective date allows little time to implement the mandated eleven holidays. Nursing facilities are open 24 hours a day, seven days a week, 365 days a year. Planning and scheduling holidays requires detailed planning. Employees value certain holidays more than others. Employees also understand the inherent trade-offs of wanting to take Easter off will mean working on July 4. The proposed rule will become administrative law a month before the effective date.

- We also operate licensed an assisted living facility ***(home health, hospice agencies, and hospitals)*** on our campus. Assisted living staff may not work at a nursing facility but they are employees of our organization. The proposed rule will create either additional expenditure and/or administrative burden for our organization when implementing this Minnesota specific mandate.
- We have assisted livings attached to both of our SNF's, and would have to consider equity adjustments across our campus for the same skill levels.
- Our nursing facility currently contracts with vendors for (housekeeping, laundry, dietary etc.). It is not clear if these standards apply to the contracted employees, if our contracts need to be opened, or if this is interfering with our vendor contracts. We are concerned that the January 1, 2025 effective date and lack of funding will make this unworkable.

This mandate has not been thoroughly vetted and thought through to implement in just a few months. Please consider opening up for comments so ACTUAL STAFF from both the metro and outstate can provide feedback on this proposal and advocate with our representatives for additional funding.

Thank you for your consideration.

John Linn (he/him/his)
Regional Executive Director | Administration
w. 320-534-3015 | c. 320-761-6567 | JohnLinn@ecumen.org

Ecumen St. Benedict's Community — St. Cloud | 1810 Minnesota Blvd. SE, St. Cloud, MN 56304
ecumen.org/SBC-StCloud | Facebook | 320-252-0010
An Ecumen Living Space | Careers | Give | Facebook | Twitter | LinkedIn

From:	Karen Martin
To:	RULES, DLI (DLI)
Subject:	Re: NHSWB
Date:	Tuesday, September 10, 2024 9:39:12 AM

I would like to receive information about NHSWB due to the positions I hold as a TMA and registered Nursing Assistant at Essentia LTC.

Thank you,

Karen Martin

From:	richer vang
To:	RULES, DLI (DLI)
Subject:	Rulemaking notice
Date:	Monday, August 26, 2024 11:24:22 AM

I would appreciate a more details or a representative to understand better. Thanks.