

Internal memo

Date: Aug. 2, 2024

To: Waivers and Variances Workgroup

From: Leah Solo

RE: Possible waiver and variance application elements, evaluation criteria, board process

The Waivers and Variances Workgroup has so far identified three issues to address:

1. Determining elements of an applications nursing homes would submit to the board.
2. Creating criteria for evaluating the applications and/or identifying other data that would help determine if a nursing home is at risk of closure or receivership.
3. Deciding on a logistical process, including timeline, for determining if a waiver or variance should be granted.

The sections below includes a summary of these items and some discussion questions about each, followed by a section about data issues to explore and, finally, a section about why the board has focused on financials in its work on waivers and variances. Next steps after a discussion with the workgroup could include drafting an application, determining criteria for evaluating that application and drafting a process for granting waivers or variances.

Possible application elements

Possible application elements discussed so far

Below are some possible elements of an application that have been discussed in the workgroup.

Grouping	Details	Notes
Statement of need	<p>The nursing home must describe:</p> <ul style="list-style-type: none"> • the kind of variance or waiver needed; • why it is needed; and • how long the Nursing Home Workforce Standards Board (NHWSB) standards need to be waived. <p>It should also include an attestation the NHWSB standards puts them at risk of closure or receivership.</p>	<p>Attestation should be signed by two representatives of the organization and could be specifically noted that one should be the nursing administrator and one from the board, executive leaders or elected leaders.</p>
The nursing home's plan to come into compliance	<p>What will the nursing home do to be able to follow the NHWSB minimum wages?</p>	<p>For example, would they cut administrative costs, renegotiate the terms of the building lease or obtain multiple bids for employee group</p>

		health insurance to find a more cost-effective plan?
Financial statements	This could include: <ul style="list-style-type: none"> • working trial balance (current year-to-date); • outstanding accounts payable listing; and • cash flow statement (current, past two years). 	This could also include audited financial statements or working trial balances for every organization (including the parent organization, if one exists) with which the facility conducts business and is owned in whole or in part by an individual or entity that has an ownership interest in the facility for the past two years.
Current ratios and supporting documentation	This could include: <ul style="list-style-type: none"> • days in accounts receivable; • days outstanding in accounts payable; • days cash on hand; • debt to equity; • working capital; and • net profit margin. 	For chain organizations or organizations with a parent company, the ratios and documentation should be provided for both the individual nursing homes applying for a waiver and the parent organization. The board should discuss and determine how current and recent this data should be, giving direction to the nursing home in the application form directions?
Projected cashflow statement	This should be for at least 24 months.	If there is a parent organization, statements for the facility and the parent organization should be included.
Operating budget	The current year and the projection for the next year could be required.	If there is a parent organization, statements for the facility and the parent organization should be included.
Other documentation judged relevant by the nursing home	This could include notice of foreclosure, default on loans or collection notices from vendors.	
Cost of implementation of NHWSB standards	This could be included in one of the other statements, such as the statement of need.	This could include the costs of wage compression.

Next steps for developing the applications

As the workgroup moves forward on developing the waiver and variance process, some questions about the elements of the application to consider are the following.

- What elements will be most useful for the board to evaluate if the nursing home is at risk of closure or receivership?
- What will the board have capacity to evaluate?
- Can we minimize the difficulty in submitting an application while also ensuring the board has the most accurate picture of the nursing home's risk of closure or receivership?

Evaluation criteria for granting a waiver or variance

As the board examines applications, it will need to have criteria for whether the facility is granted a waiver or variance. A possible means of evaluating applications would be to develop a point or rating system, assigning

value to each element and then coordinating what sum total of points would qualify for a waiver or variance. Here are some possible elements to be rated.

1. Evaluating the application
 - Have all parts of the application been submitted?
 - Do the financials put it in a situation that is at risk for closure or receivership with the added cost of the NHWSB standards?
 - At what point is an applicant considered “at risk of closure or receivership”?
 - How did the applicant prove its financial distress? What documents show the applicant is at risk of closure and receivership, and how close to closure or receivership is it?
 - Are there other alternatives to bridging the gap besides a waiver or variance, such as a financially stable parent organization?
 - Are there other options, such as renegotiation with related parties, that could change its financial situation?
 - Is there a rate increase or other solution on the horizon?
2. Evaluating the requested variance or waiver
 - Does the request meet the need? Is it too much waived or varied, or too little?
3. Evaluating the timeline
 - Is there a plan to come into compliance with the NHWSB standards and is it reasonable?
 - What do is expected of its rates in the near future?
4. Potentially relevant information to which the board already has access
 - Has it applied for or been granted status as a critical access nursing facility?
 - Has it applied for or been granted a “Distressed Nursing Home” loan?
 - If it received that loan, was part of the loan to be able to pay for the NHWSB standards?
 - If it received that loan, what was the amount and timeline for the loan?
 - Is it operating under any financial penalties based on its inability to comply with regulations?
 - Does it receive any rate add-ons in excess of its cost-based, value-based reimbursement rates?
5. Determining the type of waiver or variance
 - The board will be able to waive or vary in a number of ways.
 - The minimum wage could be made less for one or more wages.
 - The timeline could be extended so the minimum wages do not go into effect until later.
 - The standards could be completely waived.

Board process for evaluating applications

Below are some options for the board to consider in how it structures its process and timeline for making its determinations about granting waivers and variances.

1. Some options for the board to structure the process
 - The board could look through applications all together in an open meeting.
 - The board could assign staff members to evaluate the applications.
 - The board could appoint a subgroup of the board to examine applications and make a recommendation to the full board.
 - There could be a combination of any of the above.

2. Potential timeline options for the process
 - Initial opportunity to apply: As the implementation for the first two sets of standards approach, the board may want to consider a more structured timeline for evaluating requests for waivers and variances. It could look like this:
 - June 1, 2025 – initial call to nursing homes saying “if you would like to be considered for a waiver or variance from minimum-wage standards set to be implemented Jan. 1, 2026, submit your application by July 1, 2025”;
 - July 1 through Aug. 1, 2025 – initial evaluation;
 - Aug. 1 through Sept. 1, 2025 – appeal opportunity;
 - Sept. 1 through Oct. 1, 2025 – final determinations; and
 - Jan. 1, 2026 – waivers in place.
 - Ongoing process: Similar to the process for applying to be certified as a worker organization, applications will be accepted on a rolling basis and reviewed at least quarterly. This typically means an organizations application should be reviewed and granted or rejected within a set number of days of receipt of all required application materials in a form or manner as required by the board.
3. Questions identified regarding the creation of a process for a change in status of a waiver or variance
 - What would the grounds be for extending a waiver or variance?
 - What would the grounds be for revoking a waiver or variance?
 - What would the process be for ensuring order in letting a waiver or variance expire? Would there need to be notification to workers of the new expected minimum wages?

Data issues to explore

A couple of issues with data have been named in discussion. The board may want to understand these as it moves forward on waivers and variances.

- Can the Department of Human Services (DHS) and the Minnesota Department of Health (MDH) share any of the data they already have about nursing homes that might be at risk of closure or receivership? This could include applications for waivers or applications for the loan program, for example. If the board were to pursue these types of items, the board would need to be specific in order for staff members to determine what could or could not be shared.
- With industry employers and employees at the table, do we need to do anything about protecting financial statements and such from any risk of violation of anti-trust law? Should employers not be able to see the financial data of other nursing homes?
- What data can or should be kept private? How is that handled in open meetings?

Focus on financials

The workgroup has discussed whether the board should consider factors outside of financials, which has been the focus so far.

Looking at the statute directing the board to establish a process for waivers and variances, it becomes clear why the workgroup has focused on financials. The statute reads:

Minnesota Statutes 181.213, subdivision 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.

Of the factors listed in Minn. Stat. 144A.15, subd. 1 (4), as grounds for a petition of receivership, the most likely factor a nursing home would cite as the reason it is at risk of receivership as a result of the standards is "a pattern of failure to meet ongoing financial obligations, such as failing to pay for food, pharmaceuticals, personnel or required insurance." It is currently unclear how the standards adopted by the board would affect any other risk factors for receivership or closure, hence the focus on financials.

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