

Memo

Date:

To: NHWSB Waivers and Variances Workgroup

From: Leah Solo, executive director

RE: Draft process for provisional waiver, waiver and variance

At the Waivers and Variances Workgroup meeting Sept. 11, 2024, the workgroup discussed the impact of the switch away from the Resource Utilization Groups (RUGs IV) case classification system to a different system of classification, potentially to the Patient Drive Payment Model (PDPM) case classification system on the nursing home industry. This process could greatly impact the finances of nursing homes and will be implemented late 2025 and early 2026. While it is anticipated the change in case classification will have significant financial impact on nursing homes, individual facilities will not be able to gauge the financial impact until after the switch is made. For instance, while nursing homes will likely receive their new rates around Nov. 15, 2025, and then those rates will take effect Jan. 1, 2026, the first reimbursements under the new rates will not occur until February and March 2026.

The Waivers and Variances Workgroup concluded there should be a process to allow for nursing facilities to understand the impacts of this change and the Nursing Home Workforce Standards Board (NHWSB) should be flexible as it implements the minimum-wage standards simultaneously with the case classification change. Based on that discussion, below is a draft process for accomplishing this.

This is meant as a draft process for NHWSB to provide short-term (three- to four-month) waivers based on the temporary financial uncertainty the case classification system change will inject into the nursing home industry at the beginning of 2026. Though we believe there can be some flexibility, nursing homes will still need to demonstrate a risk of closure or receivership in their applications.

Next steps for the workgroup would be to discuss, in depth, what items would be most useful in an application to determine if the nursing home meets the threshold laid out in statute of being at risk of closure or receivership.

Background

Currently, under RUGs IV, each nursing home has a “total payment rate,” which then becomes dozens of “case mix adjusted total payment rates.” The total payment rate is determined by the cost reports that are submitted to the Department of Human Services (DHS) by Feb. 1 and contain costs from the previous cost year. So, on Feb. 1, 2023, nursing homes submitted costs they incurred from Oct. 1, 2021, to Sept. 30, 2022. DHS uses the cost report submitted by Feb. 1 to give nursing homes their “total payment rates” in the fall of that year, usually by Nov. 15. In the example in this paragraph, the cost report submitted Feb. 1, 2023, is the data that is used to

determine the rates nursing homes received Nov. 15, 2023, which they will use to submit for reimbursement claims monthly starting Jan. 1, 2024.

But DHS does not just give a nursing home one payment rate – it receives dozens of “case mix adjusted total payment rates” that are based on the care a resident may need in that nursing home. This is currently calculated by the RUGs IV system.

Under the RUGs IV system, those calculations look like the following.

- Case-mix adjusted total payment rate = [direct care rate x RUG weight of resident] + other care-related rate + other operating cost rate + external fixed costs rate + property rate¹

These rates are then used in the nursing home’s monthly claims for reimbursement. For instance, the rates a nursing home received on Nov. 15, 2023, are used for the reimbursement claims submitted to DHS for the month of January 2024. That claim can be submitted any time after the month is over, so starting Feb. 1, 2024.

As an example, if in January 2024, a nursing home had two residents who were at the facility for 28 days and they both had an acuity under RUGs IV of ES3, it would submit a claim for 2 x 28 x “ES3 case mix adjusted rate for nursing home A” (a rate it received on approximately Nov. 15, 2023). That claim could be submitted starting Feb. 1, 2024.

This case mix classification system is changing because RUGs IV will no longer be supported at the federal level, which means Minnesota will need to change its way of determining the nursing homes’ individual rates.

Though this means costs to nursing homes will not necessarily change, it does mean the way nursing homes submit reimbursement claims to DHS on a monthly basis will change. For instance, assume a nursing home has a “total payment rate” of \$100 a day. A resident with a very high level of care need might have a case mix rate of \$200 a day under the current system. Under RUGs IV, this high level of care would be reflected in the RUG “weight of resident” multiplying factor when a nursing home submits a reimbursement claim to DHS, which will allow the nursing home to be reimbursement more in accordance with the higher costs associated with caring for that resident. However, the new system could classify that resident differently, resulting in a nursing home only receiving \$150 a day for that resident starting Jan. 1, 2026. At the same time, another resident who had the same case mix rate of \$200 a day under RUGs IV, may be classified differently under the new case classification system, resulting in the nursing home being reimbursed \$225 a day.

By itself, this change is causing concern and uncertainty for nursing homes. Adding to that uncertainty is the simultaneous implementation of the new minimum wages, which will be an increased expense for some nursing homes. The first submissions for reimbursement under the new system can start Feb. 1, 2026, just a month after the new minimum-wage standards go into effect.

¹[Nursing Facility Reimbursement and Regulation](#), page 8.

Provisional waivers

To help ensure nursing homes that cannot absorb both the uncertainty of reimbursement amounts under a new case classification system and the increased expenses as a result of the increased minimum wages, the workgroup has proposed to allow a simplified and streamlined way for nursing homes to apply for a short-term waiver from the minimum-wage standards as they determine their finances under the new case mix classification system. Nursing homes would still need to demonstrate, through the application process, that they are at risk of closure or receivership without the waiver. However, these applications could place greater emphasis on gathering and evaluating information that relates to a facilities' ability to absorb an increase in expenses and a short-term uncertainty regarding reimbursement amounts.

My recommendation is all provisional waivers be identical – waiving the same standards for the same amount of time. Given the short timeline, this will streamline the process and make it possible to implement.

Draft process

Table 1: Draft timeline comparison

Month	Implementation timeline	Waiver and variance timeline	Ideas of items needed for application
November 2025	Nov. 15: Nursing facilities receive notice of new rates under PDPM	Nursing facilities could apply for a provisional waiver earlier than December, because they would be aware they cannot, under any circumstances, absorb the costs the first months of 2026.	Cash on hand and in reserves Projected operating costs, based on current census Statement of need Estimated reimbursements under RUGs IV case mix classification system, based on current census
December 2025		Dec. 1: Deadline to submit request for a one-time provisional waiver Dec. 15: Determination about approvals for provisional waiver	
January 2026	Jan. 1: New rates of payment go into effect Jan. 1 (anticipated): Minimum-wage standards go into effect	Jan. 1: Provisional waivers go into effect	
February 2026	Nursing facilities submit first reimbursement		

Month	Implementation timeline	Waiver and variance timeline	Ideas of items needed for application
	claims based on new rates of payment		
March 2026	Nursing facilities submit second cost report based on new rates of payment	March 15: Deadline to file for regular waiver or variance	To successfully submit for a waiver, a nursing facility would need to show it is at risk of closure or receivership if required to fully comply with the standards established by NHWSB. Nursing facilities would also need to show they have a plan to not need the waiver or variance and that the waiver or variance is only a temporary need.
April 2026		April 15: Deadline for the board to approve or deny regular waivers and variances April 30: Provisional waivers end	
May 2026		May 1: Regular waivers and variances begin	
June 2026			

Example scenarios

Nursing Home A: In October 2025, it analyzes it does not have enough cash in reserve to absorb the increase in wages and the uncertainty of the new system. Additionally, its cashflow does not leave it with much room. The nursing home applies for a provisional waiver and it is granted. With the new classification system implemented, the nursing home sees its rates increase and has enough cashflow to pay for the increased wages. It does not apply for a regular waiver or variance and begins paying the new wages May 1.

Nursing Home B: The same situation as Nursing Home A, except the new classification system does not increase its cashflow, so it applies for an extension, along with a plan to renegotiate rent and other expenses, which will allow the facility to operate in compliance with the wage rules without being at risk of closure or receivership. It is granted the waiver for a year.

Nursing Home C: The nursing home was fine in October and did not apply for a provisional waiver, but its new rates under the new classification system are much lower. It had enough cash to float through April, but it applies for a waiver or variance, providing the materials asked for in the provisional and regular waiver and variance.

Explanation on an application

Below is an example of what the waiver application process might look like. This example is only an illustration of how the board can communicate the timelines and application requirements for a waiver. The board will need to determine the timeline for applications and the materials required to consider an application for both provisional waivers and regular waivers or variances.

Dear Nursing home worker employer,

Understanding the changes in rates from 2025-2026 have some uncertainty, the Nursing Home Workforce Standards Board (NHWSB) wants to provide some flexibility in requesting a waiver or variance from the minimum-wage standards that begin Jan. 1, 2026.

Beginning Oct. 1 through Dec. 1, 2025, you may apply for a provisional waiver. These will be a full waiver from the minimum-wage standards set by NHWSB and will last through April 30, 2026.

If you determine, during this period, you believe you need a longer time to be able to come into compliance with the minimum-wage standards without being put at risk of closure or receivership under Minnesota Statutes § 144A.15, you may apply for a further waiver or variance. These will be more tailored to your specific needs, but they must still be temporary and the board will need a plan for you to find a way to meet the minimum-wage standards.

Here are some major dates to keep in mind:

Oct. 1 through Dec. 1, 2025	Application for provisional waivers opens
Dec. 15, 2025	Notification of provisional waivers approved
Jan. 1, 2026	New minimum wages effective; provisional waivers in effect
Feb. 15 through March 15, 2026	Application for regular waivers and variances opens
April 15, 2026	Notification of waivers and variances approved
April 30, 2026	Provisional waivers expire
May 1, 2026	Waivers and variances in effect

Documents that must be submitted to ensure prompt processing of your application for a waiver or variance are as follows.

Provisional waiver

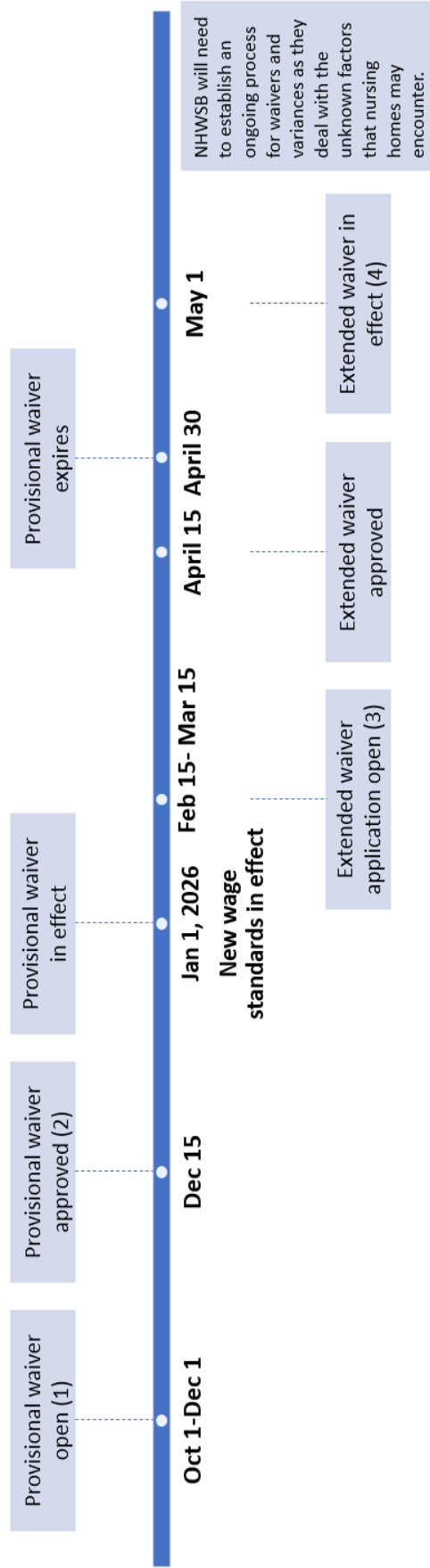
- COH, current financials
- Statement of need, including an explanation of how compliance with all or part of the rules adopted by NHWSB will put the nursing facility at risk of closure or receivership under Minn. Stat. § 144A.15

Regular waiver or variance

- Documents from provisional waiver
- Description of what has changed since the provisional waiver application

- Statement of need, including an explanation of how compliance with all or part of the rules adopted by NHWSB will put the nursing facility at risk of closure or receivership under Minn. Stat. § 144A.15
 - If you did not apply for a provisional waiver, you may still apply for a waiver, but additional information may be necessary.

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- 1) Nursing homes submit current cashflow, reserves, and why they believe the standards will put them at risk of closure or receivership
- 2) NHWSB determines if the risk is legitimate, understanding that there is uncertainty in the new classification system.
- 3) Nursing homes see how their finances look after the implementation of the new classification system.
If they determine the new system does not help their finances, they will need to submit further paperwork to demonstrate the need and their plan to meet the standards.
NHWSB will need to examine nursing home finances with the new classification system.
- 4) Nursing homes continue to work to no longer need waivers.