

October 31, 2024

**VIA E-FILING ONLY**

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**VIA E-FILING ONLY**

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**Re: *In the Matter of the Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements For Nursing Home Workers; Minnesota Rules, Part 5200.2000 to 5200.2050***  
**OAH 28-9001-40213; Revisor R-4870**

Dear Rule Requestors:

Enclosed herewith and served upon you please find the **ORDER ON REVIEW OF RULES UNDER MINN. STAT. § 14.389 AND MINN. R. 1400.2410**. With the approval of these expedited rules, the Office of Administrative Hearings has closed this file and is returning the rule record to the Board so that the Board can maintain the official rulemaking record in this matter as required by Minn. Stat. § 14.365.

Please ensure that the Board's signed order adopting the rules is filed with our office. The Office of Administrative Hearings will request the finalized rules from the Revisor's office following receipt of that order. The Office of Administrative Hearings will then file the adopted rules with the Secretary of State, who will forward one copy to the Revisor of Statutes and one copy to the Minnesota Department of Labor and Industry. **Pursuant to Minn. Stat. § 14.389, subd. 3 and Minn. R. 1400.2410, subd. 5, the Board is responsible for filing a copy of the expedited rules with the Governor.**

The Board's next step is to arrange for publication of the Notice of Adoption in the State Register. The Board should request copies of the Notice of Adoption from the Revisor's Office. One copy should be placed in the official rulemaking record. Two copies of the Notice of Adoption should be sent to the State Register for publication. Please note that if the final expedited rule is different from the rule originally published, an agency must publish a copy of the changes in the State Register. An expedited rule becomes effective upon publication of the Notice of Adoption in the State Register in accordance with Minn. Stat. § 14.389, subd. 3.

If you have any questions regarding this matter, please contact William Moore at (651) 361-7893, [william.t.moore@state.mn.us](mailto:william.t.moore@state.mn.us) or via facsimile at (651) 539-0310.

Sincerely,

A handwritten signature in black ink that reads "Nichole Sletten". The signature is written in a cursive, flowing style.

NICHOLE SLETTEN  
Legal Assistant

Enclosure

cc: Legislative Coordinating Commission  
Office of the Revisor of Statutes



STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
ADMINISTRATIVE LAW SECTION  
PO BOX 64620  
600 NORTH ROBERT STREET  
ST. PAUL, MINNESOTA 55164

**CERTIFICATE OF SERVICE**

In the Matter of the Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements For Nursing Home Workers; Minnesota Rules, Part 5200.2000 to 5200.2050	OAH Docket No. 28-9001-40213 R-4870
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On October 31, 2024, a true and correct copy of the **ORDER ON REVIEW OF RULES UNDER MINN. STAT. § 14.389 AND MINN. R. 1400.2410** was served by electronic mail, unless otherwise indicated below, addressed to the following:

**VIA E-FILING ONLY**

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STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE NURSING HOME WORKFORCE STANDARDS BOARD

In the Matter Adoption of Expedited Permanent Rules Governing Certification Criteria, Notice Posting Requirements, and Holiday Pay Rules for Nursing Home Workers; Minnesota Rules, Part 5200.2000 to 5200.2050

**ORDER ON REVIEW  
OF RULES UNDER  
MINN. STAT. § 14.389  
AND MINN. R. 1400.2410**

On October 25, 2024, the Nursing Home Workforce Standards Board (Board) filed documents with the Office of Administrative Hearings seeking review and approval of the above-entitled rules under Minn. Stat. § 14.389 (2024) and Minn. R. 1400.2410 (2023).

Based upon a review of the written submissions by the Board, and the contents of the rulemaking record, and for the reasons stated in the attached memorandum,

**IT IS HEREBY DETERMINED THAT:**

1. The proposed rules were adopted in compliance with the procedural requirements of Minn. Stat. § 14.389 and Minn. R. 1400.2410.
2. The Board has the statutory authority to adopt these proposed rules using the expedited rulemaking process pursuant to Minn. Stat. §§ 181.213 – 215 (2024).
3. The proposed rules meet the standards of Minn. R. 1400.2100, items A and C - H (2023).

**IT IS HEREBY ORDERED THAT:**

The proposed rules are **APPROVED**.

Dated: October 31, 2024



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JOSEPH C. MEYER  
Administrative Law Judge

## MEMORANDUM

Proposed rules must be disapproved if they conflict or do not comply with their enabling statute or other applicable law, or are otherwise unconstitutional or illegal.<sup>1</sup> The proposed rules do not run afoul of any applicable law, and are not unconstitutional or illegal. That said, several arguments raised in the rulemaking record merit additional analysis. Specifically, commenters argued that the proposed rules are illegal because they (1) are preempted by the National Labor Relations Act (NLRA);<sup>2</sup> (2) violate the United States and Minnesota Constitutions by impairing contracts; and (3) violate the United States and Minnesota Constitutions by prioritizing Christmas over non-Christian holidays.

### **NLRA Preemption**

The proposed rules, among other things, provide for nursing home workers to earn “time-and-one-half” of their regular wage for days worked on eleven identified holidays. A concern was raised that, with respect to nursing home workers covered by collective bargaining agreements, the NLRA has preempted the proposed rules because the proposed rules’ requirements could conflict with holiday schedules that are the subject of collective bargaining.

The United States Supreme Court, however, has said that “[w]hen a state law establishes a minimal employment standard not inconsistent with the general legislative goals of the NLRA, it conflicts with none of the purposes of the [NLRA].”<sup>3</sup> “States possess broad authority to regulate the employment relation to protect workers within the State” through, among other things, enacting “minimum and other wage laws.”<sup>4</sup>

The holiday wage provisions of the proposed rules are a “minimal employment standard.” Those provisions set a wage requirement that applies to union and non-union employees alike. In proposing such a standard, the Board is acting well-within the States’ broad authority to protect workers and is doing so in a manner that the United States Supreme Court has recognized is not preempted by the NLRA.

### **Contract Impairment**

It has similarly been argued that, because the holiday wage laws will provide compensation greater than what has been established in collective bargaining agreements, the proposed rules’ holiday wage provisions have impaired contracts in violation of the United States and Minnesota Constitutions.

The United States Supreme Court has made clear that “States must possess broad power to adopt general regulatory measures without being concerned that private

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<sup>1</sup> Minn. R. 1400.2100(D and E).

<sup>2</sup> 29 U.S.C. § 141, *et. seq.*

<sup>3</sup> *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 757 (1985).

<sup>4</sup> *Id.* at 756.

contracts will be impaired, or even destroyed, as a result.”<sup>5</sup> To be sure, this power is not unlimited. “[L]aws intended to regulate existing contractual relationships must serve a legitimate public purpose.”<sup>6</sup> That said, “courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure.”<sup>7</sup>

Similar to the preemption analysis, a broad measure setting minimum wage standards for holiday pay is within the regulatory power of the State. Assuredly, establishing labor standards to protect the health and welfare of nursing home employees is a legitimate public purpose. The Minnesota Legislature delegated to the Board the authority to determine the necessity and reasonableness of the employment standards for nursing home workers.<sup>8</sup> In exercising that authority by establishing holiday wage standards for nursing homes, the Board has not unconstitutionally impaired contracts.

### **Prioritization of Christmas**

One of the eleven holidays subject to the holiday wage provisions in the proposed rules is Christmas day. Concerns have also been raised that, by including a holiday associated with Christianity in the provisions, the Board has violated the Minnesota and United States Constitutions by favoring Christianity over other religions.

A federal court has dismissed a challenge to Christmas being designated a national holiday, concluding that “[b]y giving federal employees a paid vacation day on Christmas, the government is doing no more than recognizing the cultural significance of the holiday” and that though this “may accommodate Christians who wish to engage in religious celebrations of Jesus Christ’s birth [it] does not mean that the holiday has an impermissible religious effect.”<sup>9</sup> Minnesota also recognizes Christmas as a state holiday.<sup>10</sup> If the United States and Minnesota governments do not run afoul of their respective constitutions by treating Christmas as an official holiday, then the Board does not do so by treating Christmas as a holiday in the context of its holiday wage provisions.

For these reasons, and because the proposed rules otherwise comply with the requirements of Minn. Stat. § 14.389 and Minn. R. 1400.2410, the proposed rules are **APPROVED**.

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<sup>5</sup> *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 22 (1977).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 23.

<sup>8</sup> Minn. Stat. § 181.213, subd. 1.

<sup>9</sup> *Ganulin v. U.S.*, 71 F.Supp.2. 824, 834–35 (S.D. Ohio 1999).

<sup>10</sup> Minn. Stat. § 645.44, subd. 5(a) (2024).

In the Matter of the Adoption of Expedited  
Permanent Rules Governing Certification  
Criteria, Notice Posting Requirements, and  
Holiday Pay Rules for Nursing Home  
Workers; *Minnesota Rules*, Part 5200.2000  
to 5200.2050

OAH Docket No. 28-9001-40213

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Docket No.— 28-9001-40213

Exhibit A—Proposed rule,  
including the Revisor's approval

1.1 **Nursing Home Workforce Standards Board**

1.2 **Proposed Expedited Permanent Rules Modifying Certification Criteria, Notice Posting**  
1.3 **Requirements, And Holiday Pay Rules For Nursing Home Workers**

1.4 **5200.2000 DEFINITIONS.**

1.5 Subpart 1. **Scope.** Unless otherwise defined in this part, the terms used in parts  
1.6 5200.2000 to 5200.2050 have the meanings given in Minnesota Statutes, section 181.211.

1.7 Subp. 2. **Applicant.** "Applicant" means a worker organization that applies to become  
1.8 a certified worker organization or renew its certification.

1.9 Subp. 3. **Executive director.** "Executive director" means the executive director of  
1.10 the Minnesota Nursing Home Workforce Standards Board.

1.11 Subp. 4. **Holiday.** "Holiday" means the following dates: New Year's Day, January 1;  
1.12 Martin Luther King's Birthday, the third Monday in January; Washington's and Lincoln's  
1.13 Birthday, the third Monday in February; Memorial Day, the last Monday in May; Juneteenth,  
1.14 June 19; Independence Day, July 4; Labor Day, the first Monday in September; Indigenous  
1.15 Peoples' Day, the second Monday in October; Veterans Day, November 11; Thanksgiving  
1.16 Day, the fourth Thursday in November; and Christmas Day, December 25. A holiday is a  
1.17 24-hour period comprised of the time from midnight of the date designated as a holiday to  
1.18 the next midnight.

1.19 Subp. 5. **Minnesota Nursing Home Workforce Standards Board Act.** The  
1.20 "Minnesota Nursing Home Workforce Standards Board Act" or "act" means Minnesota  
1.21 Statutes, sections 181.211 to 181.217.

1.22 **5200.2010 HOLIDAY PAY.**

1.23 Subpart 1. **Holiday pay.** Beginning January 1, 2025, a nursing home worker who  
1.24 works any holiday shall be paid a minimum of time-and-one-half their regular hourly wage  
1.25 for all hours worked during the holiday.



2.1 Subp. 2. **Modification of holiday date and time.**

2.2 A. The start and stop times for the 24-hour period comprising a holiday can be  
2.3 modified by a nursing home employer if agreed upon by a majority of affected nursing  
2.4 home workers or the exclusive representative of the affected nursing home workers if one  
2.5 exists.

2.6 B. A nursing home employer may substitute up to four holidays for an alternate  
2.7 day in the same calendar year if the substitution is agreed upon by a majority of affected  
2.8 nursing home workers or the exclusive representative of the affected nursing home workers  
2.9 if one exists.

2.10 C. Any agreement to modify a holiday date or time must be made in the calendar  
2.11 year preceding the start of the calendar year in which the modified holiday is observed.  
2.12 There must be written record of an agreement under this item.

2.13 D. The nursing home employer must retain a record of agreement to modify a  
2.14 holiday date or time under item C for a minimum of three years following the observation  
2.15 of the modified holiday.

2.16 **5200.2020 NOTICE OF NURSING HOME WORKER RIGHTS.**

2.17 Subpart 1. **Posting of notice of nursing home worker rights.** Nursing home employers  
2.18 must provide notice informing nursing home workers of the rights and obligations provided  
2.19 under the act or established by the Minnesota Nursing Home Workforce Standards Board.  
2.20 A nursing home employer must provide notice using the same means that the nursing home  
2.21 employer uses to provide other legally required work-related notices to nursing home  
2.22 workers. Nursing home employers must, at a minimum:

2.23 A. post a copy of the notice at each work site where nursing home workers work  
2.24 and in a location where the notice is readily seen and reviewed by all nursing home workers

3.1 working at the site, and take steps to ensure that the notice is not altered, defaced, or covered  
3.2 by other material; or

3.3 B. provide a paper or electronic copy of the notice to all nursing home workers  
3.4 and applicants for employment as a nursing home worker.

3.5 Subp. 2. **Contents of notice.** Notices of a nursing home worker's rights and obligations  
3.6 must include a statement containing all nursing home employment standards established  
3.7 by the Minnesota Nursing Home Workforce Standards Board. Notices must also include  
3.8 the following statements of rights and responsibilities:

3.9 A. It is unlawful for a nursing home employer to discharge, discipline, penalize,  
3.10 interfere with, threaten, restrain, coerce, or otherwise retaliate or discriminate against a  
3.11 nursing home worker because the person has exercised or attempted to exercise rights  
3.12 granted under the act; participated in any process or proceeding under the act, including but  
3.13 not limited to board hearings, board or department investigations, or other related  
3.14 proceedings; or attended or participated in training under Minnesota Statutes, section 181.214.

3.15 B. It is unlawful for a nursing home employer to:

3.16 (1) inform another employer that a nursing home worker or former nursing  
3.17 home worker has engaged in activities protected under the act; or

3.18 (2) report or threaten to report the actual or suspected citizenship or  
3.19 immigration status of a nursing home worker, former nursing home worker, or family  
3.20 member of a nursing home worker to a federal, state, or local agency for exercising or  
3.21 attempting to exercise any right protected under the act.

3.22 C. A nursing home worker found to have experienced retaliation is entitled to  
3.23 back pay and reinstatement to the worker's previous position, wages, benefits, hours, and  
3.24 other conditions of employment.

4.1 D. A nursing home worker may individually or as part of a class action bring a  
4.2 civil action against a nursing home employer in district court for violations of the act or of  
4.3 any applicable minimum nursing home employment standards or local minimum nursing  
4.4 home employment standards. The civil action must be filed in the district court of the county  
4.5 where the violation or violations are alleged to have been committed or where the nursing  
4.6 home employer resides, or in any other court of competent jurisdiction.

4.7 E. In an action against nursing home employers for violations of the act, nursing  
4.8 home workers may seek damages and other appropriate relief provided by Minnesota  
4.9 Statutes, section 177.27, subdivision 7, or otherwise provided by law, including reasonable  
4.10 costs, disbursements, witness fees, and attorney fees. A court may also issue an order  
4.11 requiring compliance with the act or with the applicable minimum nursing home employment  
4.12 standards or local minimum nursing home employment standards.

4.13 F. An agreement between a nursing home employer and nursing home worker or  
4.14 labor union that fails to meet the minimum standards and requirements under parts 5200.2000  
4.15 to 5200.2050 and the act is not a defense to an action brought under the act.

4.16 G. A nursing home worker seeking information or assistance may contact the  
4.17 Department of Labor and Industry for further information regarding their rights, protections,  
4.18 and obligations. Contact information for the Department of Labor and Industry must be  
4.19 included in the notice.

4.20 H. Nursing home workers are required to attend trainings regarding their rights  
4.21 and obligations under the act, and the trainings must, at a minimum, cover the following  
4.22 topics:

4.23 (1) applicable compensation and working conditions standards;

4.24 (2) antiretaliation protections in place;

5.1 (3) information on how to enforce the rights and protections under parts  
5.2 5200.2000 to 5200.2050 and the act and how to report violations, and the remedies available  
5.3 for violations of those rights, protections, and standards;

5.4 (4) contact information for the Department of Labor and Industry, the board,  
5.5 and any local enforcement agencies;

5.6 (5) the purposes and functions of the board and information on upcoming  
5.7 hearings, investigations, or other opportunities for nursing home workers to become involved  
5.8 in board proceedings;

5.9 (6) other rights, duties, and obligations under the act;

5.10 (7) any updated standards or changes to the information provided since the  
5.11 most recent training session;

5.12 (8) any other information appropriate to facilitate compliance with the act;  
5.13 and

5.14 (9) information on labor standards in other applicable local, state, and federal  
5.15 laws, rules, and ordinances regarding nursing home working conditions or nursing home  
5.16 worker health and safety.

5.17 I. A nursing home employer must compensate its nursing home workers for training  
5.18 completed as required by law and reimburse any reasonable travel expenses associated with  
5.19 attending training sessions not held on the premises of the nursing home.

5.20 J. The nursing home employer shall provide the notices required under this part  
5.21 in the chosen language of a nursing home worker upon the nursing home worker's request.

5.22 **5200.2030 APPLICATION FOR CERTIFICATION AND RENEWAL.**

5.23 Subpart 1. Requirements to become a certified worker organization. To become  
5.24 a certified worker organization, an applicant must:

6.1 A. meet the definition of worker organization in Minnesota Statutes, section  
6.2 181.211;

6.3 B. submit complete information satisfying the application requirements under  
6.4 subpart 2; and

6.5 C. demonstrate the ability to provide training as follows:

6.6 (1) the training must follow curriculum established by the board and include  
6.7 a synchronous portion for fielding questions from nursing home workers;

6.8 (2) the training, follow-up written materials, and responses to inquiries are  
6.9 in a language in which a nursing home worker is proficient;

6.10 (3) the training records must be provided to the nursing home; and

6.11 (4) the records of workers who attend a training, including when the workers  
6.12 were trained, are retained by the worker organization for five years.

6.13 Subp. 2. **Application.**

6.14 A. To become certified, an applicant must file with the board an application in a  
6.15 format prescribed by the board that includes:

6.16 (1) the applicant's legal business name;

6.17 (2) the applicant's federal employer tax identification number;

6.18 (3) a list of the applicant's board of directors;

6.19 (4) an affirmation that the applicant is exempt from federal income taxation  
6.20 under section 501(c)(3), 501(c)(4), or 501(c)(5) of the Internal Revenue Code;

6.21 (5) an affirmation that the applicant is not dominated or interfered with by  
6.22 any nursing home employer within the meaning of United States Code, title 29, section  
6.23 158a(2);

7.1                   (6) an explanation of and evidence demonstrating that the applicant has at  
7.2 least five years of experience engaging with and advocating for nursing home workers;

7.3                   (7) an affirmation that data received from a nursing home employer in  
7.4 connection to the training of its nursing home workers will be maintained according to any  
7.5 applicable data security law and used only for the purposes of Minnesota Statutes, section  
7.6 181.214, subdivision 5;

7.7                   (8) information demonstrating that the applicant will follow the curriculum  
7.8 established by the board and otherwise satisfy the requirements of Minnesota Statutes,  
7.9 section 181.214, including:

7.10                   (a) the training materials the applicant proposes to use;

7.11                   (b) the follow-up materials the applicant proposes to send to nursing  
7.12 home workers after trainings, which must include a certificate of completion formatted in  
7.13 a manner prescribed by the board; and

7.14                   (c) an affirmation that the applicant will provide training, follow-up  
7.15 written materials, and responses to inquiries in a language in which a nursing home worker  
7.16 is proficient;

7.17                   (9) an affirmation that the applicant will update its curriculum as required by  
7.18 the board;

7.19                   (10) an affirmation that the applicant will provide nursing homes with  
7.20 applicable training records; and

7.21                   (11) an affirmation that the information provided in the application is true.

7.22                   B. An applicant may request that the executive director or the executive director's  
7.23 designee examine parts of the application and answer questions related to eligibility.

8.1 Subp. 3. **Renewal application.** Within 30 days of updated standards becoming  
8.2 effective, the board must open a renewal application period. The renewal application period  
8.3 must last 60 days, during which time a certified worker organization must apply for renewal  
8.4 if it wishes to remain certified. The applicant must file with the board a complete renewal  
8.5 application in a format prescribed by the board that includes:

8.6 A. updates to any information previously provided to the board;

8.7 B. an affirmation that the applicant has reviewed any updated standards and  
8.8 curriculum established by the board;

8.9 C. an affirmation that the applicant will educate its trainers on the updated standards  
8.10 and curriculum;

8.11 D. an affirmation that data received from a nursing home employer in connection  
8.12 to the training of its nursing home workers will be maintained according to any applicable  
8.13 data security law and used only for the purposes set forth in Minnesota Statutes, section  
8.14 181.214, subdivision 5; and

8.15 E. an affirmation that all information in the application is true.

8.16 **5200.2040 APPROVAL, DENIAL, REVOCATION, AND CESSATION OF**  
8.17 **CERTIFICATION.**

8.18 **Subpart 1. Decision on a worker organization's application or renewal application.**

8.19 A. Within 90 days of receiving an application for certification or renewal of  
8.20 certification, the board must approve or deny the application.

8.21 B. When an initial application is approved, the board must assign a unique  
8.22 identification number for the certified worker organization, which must be used for any  
8.23 subsequent renewals.

9.1 **Subp. 2. Denial or revocation of certification.**

9.2 **A. The board may deny an application for certification or recertification, or revoke**  
9.3 **certification, if an organization does any of the following:**

9.4 **(1) provides false or incomplete information to the board;**

9.5 **(2) fails to meet the necessary organizational requirements under the law;**

9.6 **(3) fails to provide trainings as required;**

9.7 **(4) fails to provide training records to nursing homes; or**

9.8 **(5) commits acts that demonstrate incompetence, untrustworthiness, financial**  
9.9 **irresponsibility, or dishonesty.**

9.10 **B. The executive director or the executive director's designee may receive**  
9.11 **complaints regarding alleged violations of this part. The executive director or the executive**  
9.12 **director's designee shall investigate the validity of the complaint and recommend to the**  
9.13 **board whether revocation is appropriate.**

9.14 **C. If an application is denied, the applicant may not submit another application**  
9.15 **within six months of the denial.**

9.16 **D. If a certification is revoked, the applicant may not submit another application**  
9.17 **within one year of the revocation.**

9.18 **Subp. 3. Cessation of certification.**

9.19 **A. If an organization decides to discontinue providing training to nursing home**  
9.20 **workers, the organization must notify the board as soon as practicable and in any event**  
9.21 **within five business days.**

9.22 **B. Within ten business days of notifying the board under item A, the organization**  
9.23 **must confirm to the board that:**



10.1                   (1) all nursing home workers who were trained by the organization received  
10.2 certifications of completion as prescribed by the board and follow-up materials;

10.3                   (2) all nursing home workers who were trained by the organization were  
10.4 informed that the organization would no longer be available to respond to inquiries related  
10.5 to nursing home workforce standards;

10.6                   (3) all nursing home workers who had upcoming trainings scheduled with  
10.7 the organization were informed of the organization's decision to no longer provide trainings;  
10.8 and

10.9                   (4) all nursing home employers have received the proper documentation of  
10.10 worker attendance at trainings.

10.11 **5200.2050 BOARD RESOURCES.**

10.12                   A. The board must maintain a current list of certified worker organizations on its  
10.13 public website.

10.14                   B. The list must include information about each certified worker organization's  
10.15 ability to provide trainings in various geographic locations, ability to train virtually,  
10.16 availability to train during various work shifts, and contact information for the person  
10.17 responsible for ongoing communication with nursing home employers.

# Office of the Revisor of Statutes

## Administrative Rules



**TITLE:** Proposed Expedited Permanent Rules Modifying Certification Criteria, Notice Posting Requirements, And Holiday Pay Rules For Nursing Home Workers

**AGENCY:** Nursing Home Workforce Standards Board

**REVISOR ID:** R-4870

**MINNESOTA RULES:** Chapter 5200

The attached rules are approved for  
publication in the State Register

A handwritten signature in black ink, appearing to read "Sheree Speer", written over a horizontal line.

Sheree Speer  
Chief Deputy Revisor

Docket No.— 28-9001-40213

Exhibit B1—Notice of Intent to  
Adopt Expedited Rules, *State*  
*Register*



# MINNESOTA STATE REGISTER

MONDAY, AUGUST 26, 2024

VOLUME 49, NUMBER 9

PAGES 187 - 256





# Minnesota State Register

## Judicial Notice Shall Be Taken of Material Published in the Minnesota State Register

The Minnesota State Register is the official publication of the State of Minnesota's Executive Branch of government, published weekly to fulfill the legislative mandate set forth in Minnesota Statutes, Chapter 14, and Minnesota Rules, Chapter 1400. It contains:

- Proposed Rules
- Adopted Rules
- Exempt Rules
- Expedited Rules
- Withdrawn Rules
- Executive Orders of the Governor
- Appointments
- Proclamations
- Vetoed Rules
- Commissioners' Orders
- Revenue Notices
- Official Notices
- State Grants and Loans
- Contracts for Professional, Technical and Consulting Services
- Non-State Public Bids, Contracts and Grants

## Printing Schedule and Submission Deadlines

Vol. 49 Issue Number	Publish Date	Deadline for: all Short Rules, Executive and Commissioner's Orders, Revenue and Official Notices, State Grants, Professional-Technical- Consulting Contracts, Non-State Bids and Public Contracts	Deadline for LONG, Complicated Rules (contact the editor to negotiate a deadline)
#10	Monday 3 September	Noon Tuesday 27 August	Noon Thursday 22 August
#11	Monday 9 September	Noon Tuesday 3 September	Noon Thursday 29 August
#12	Monday 16 September	Noon Tuesday 10 September	Noon Thursday 5 September
#13	Monday 23 September	Noon Tuesday 17 September	Noon Thursday 12 September

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State Capitol, Room 231, St. Paul, MN 55155  
<https://www.senate.mn/>

### Minnesota State Court System

Court Information Office (651) 296-6043  
MN Judicial Center, Rm. 135,  
25 Rev. Dr. Martin Luther King Jr Blvd., St. Paul, MN 55155  
<http://www.mncourts.gov>

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### Federal Register

Office of the Federal Register (202) 512-1530; or (888) 293-6498  
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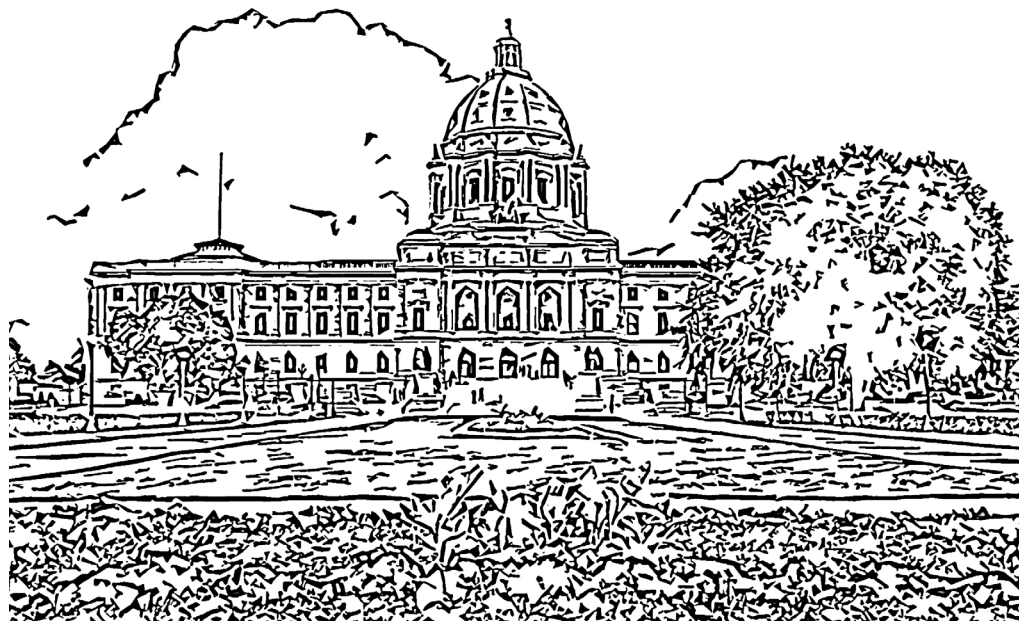
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*Front Cover Artwork: A loon searches for an evening meal on Long Lake, near Longville, Minnesota.  
 Photo by Sean Plemmons*



# Minnesota Rules: Amendments and Additions

## NOTICE: How to Follow State Agency Rulemaking in the State Register

The State Register is the official source, and only complete listing, for all state agency rulemaking in its various stages. State agencies are required to publish notice of their rulemaking action in the State Register. Published every Monday, the State Register makes it easy to follow and participate in the important rulemaking process. Approximately 80 state agencies have the authority to issue rules. Each agency is assigned specific Minnesota Rule chapter numbers. Every odd-numbered year the Minnesota Rules are published. Supplements are published to update this set of rules. Generally speaking, proposed and adopted exempt rules do not appear in this set because of their short-term nature, but are published in the State Register.

An agency must first solicit Comments on Planned Rules or Comments on Planned Rule Amendments from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency (Minnesota Statutes §§ 14.101). It does this by publishing a notice in the State Register at least 60 days before publication of a notice to adopt or a notice of hearing, or within 60 days of the effective date of any new statutory grant of required rulemaking.

When rules are first drafted, state agencies publish them as Proposed Rules, along with a notice of hearing, or a notice of intent to adopt rules without a hearing in the case of noncontroversial rules. This notice asks for comment on the rules as proposed. Proposed emergency rules, and withdrawn proposed rules, are also published in the State Register. After proposed rules have gone through the comment period, and have been rewritten into their final form, they again appear in the State Register as Adopted Rules. These final adopted rules are not printed in their entirety, but only the changes made since their publication as Proposed Rules. To see the full rule, as adopted and in effect, a person simply needs two issues of the State Register, the issue the rule appeared in as proposed, and later as adopted.

The State Register features partial and cumulative listings of rules in this section on the following schedule: issues #1-26 inclusive (issue #26 cumulative for issues #1-26); issues #27-52 inclusive (issue #52, cumulative for issues #27-52 or #53 in some years). A subject matter index is updated weekly and is available upon request from the editor. For copies or subscriptions to the State Register, contact the editor at 651-201-3204 or email at sean.plemmons@state.mn.us

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# Expedited Rules

Provisions exist for the Commissioners of some state agencies to adopt expedited rules when conditions exist that do not allow the Commissioner to comply with the requirements for normal rules. The Commissioner must submit the rule to the attorney general for review and must publish a notice of adoption that includes a copy of the rule and the conditions. Expedited rules are effective upon publication in the State Register, and may be effective up to seven days before publication under certain conditions.

Expedited rules are effective for the period stated or up to 18 months. Specific *Minnesota Statute* citations accompanying these expedited rules detail the agency's rulemaking authority.

**KEY: Proposed Rules** - Underlining indicates additions to existing rule language. ~~Strikeouts~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."  
**Adopted Rules** - Underlining indicates additions to proposed rule language. ~~Strikeout~~ indicates deletions from proposed rule language.

## Nursing Home Workforce Standards Board Proposed Expedited Permanent Rules Modifying Certification Criteria, Notice Posting Requirements, And Holiday Pay Rules For Nursing Home Workers; Notice Of Intent To Adopt Expedited Permanent Rules Without A Public Hearing

**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.**

**Introduction.** The Minnesota Nursing Home Workforce Standards Board ("Board") intends to adopt rules under the expedited rulemaking process following the rules of the Office of Administrative Hearings, *Minnesota Rules*, part 1400.2410, and the Administrative Procedure Act, *Minnesota Statutes*, section 14.389. You may submit written comments on the proposed expedited rules until September 25, 2024.

**Contact Person.** Submit comments or questions on the rules to: Leah Solo at the Department of Labor and Industry, 443 Lafayette Rd. N., St. Paul, MN 55155, phone (651) 284-5076, and email to [dli.rules@state.mn.us](mailto:dli.rules@state.mn.us). Comments must be in writing. You may also review the proposed rule and submit written comments via the Office of Administrative Hearings Rulemaking eComments website at <https://minnesotaoah.granicusideas.com/discussions>.

**Subject of the Expedited Rules and Statutory Authority.** The proposed expedited rules establish holiday pay provisions for nursing home workers; certification criteria for worker organizations; and minimum notice posting requirements for nursing home employers.

As to holiday pay, the proposed rules establish minimum nursing home worker pay of time-and-one-half for all hours worked on certain holidays. The proposed rules also allow for some modification to the dates and times of prescribed holidays.

As to certification criteria, the proposed rules establish the criteria worker organizations must meet to become certified to conduct nursing home worker trainings under *Minnesota Statutes*, section 181.214. The proposed rules also establish the application and renewal process for certification, and prescribe processes for the revocation of certification and cessation of certification.

As to minimum notice posting requirements, *Minnesota Statutes*, section 181.215, subdivision 1, requires nursing home employers to post notices informing nursing home workers of the minimum nursing home employment standards and local minimum standards. The proposed rules outline the posting obligations for nursing home employers, including minimum content and posting requirements.

The statutory authority to adopt the proposed rules under the expedited rulemaking process is *Minnesota Statutes*,



# Expedited Rules

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section 181.213, subdivision 1 (granting authority to adopt rules on the compensation of nursing home workers); Minnesota Statutes, section 181.213, subdivision 3 (granting authority to adopt new rules for minimum nursing home employment standards); Minnesota Statutes, section 181.214, subdivision 1 (granting authority to adopt rules for certification of worker organizations); and Minnesota Statutes, section 181.215, subdivision 2 (granting authority to adopt notice posting requirements).

A copy of the proposed rules is published in the State Register and attached to this notice as mailed. The proposed expedited rules may be viewed at <https://www.dli.mn.gov/about-department/rulemaking/nhwsb-rulemaking-expedited-rules-holiday-pay>

**Comments.** You have until 4:30 p.m. on September 25, 2024, to submit written comment in support of or in opposition to the proposed expedited rules and any part or subpart of the rules. Your comment must be in writing and received by the agency contact person or submitted on the Office of Administrative Hearings Rulemaking eComments website by the due date. The Board encourages comment. Your comment should identify the portion of the proposed expedited rules addressed and the reason for the comment. In addition, you are encouraged to propose any change proposed. You should also make any comments that you have on the legality of the proposed rules during this comment period. Important: Comments will be made available to the public. Please only submit information that you wish to make available publicly.

**Modifications.** The Board may modify the proposed expedited rules using either of two avenues: The agency may modify the rules directly so long as the modifications do not make them “substantially different” as defined in Minnesota Statutes, section 14.05, subdivision 2, paragraphs (b) and (c); or the agency may adopt substantially different rules if it follows the procedure under Minnesota Rules, part 1400.2110. If the final rules are identical to the rules originally published in the State Register, the agency will publish a notice of adoption in the State Register. If the final rules are different from the rules originally published in the State Register, the agency must publish a copy of the changes in the State Register. If the proposed expedited rules affect you in any way, the Board encourages you to participate in the rulemaking process.

**Alternative Format.** Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request, please contact the Board contact person at the address or telephone number listed above.

**Lobbyist Registration.** *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. You may direct questions regarding this requirement to the Campaign Finance and Public Disclosure Board at: Suite #190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 539-1180 or 18006573889.

**Adoption and Review of Expedited Rules.** The Board may adopt the rules at the end of the comment period. The Board will then submit rules and supporting documents to the Office of Administrative Hearings for review for legality. You may ask to be notified of the date that the Board submits the rules. If you want to be so notified or want to receive a copy of the adopted rules, or want to register with the Board to receive notice of future rule proceedings, submit your request to the Board contact person listed above.

Date: August 13, 2024

Jamie Gulley, Chair  
Minnesota Nursing Home Workforce Standards Board

## **5200.2000 DEFINITIONS.**

Subpart 1. **Scope.** Unless otherwise defined in this part, the terms used in parts 5200.2000 to 5200.2050 have the meanings given in Minnesota Statutes, section 181.211.

Subp. 2. **Applicant.** “Applicant” means a worker organization that applies to become a certified worker organization or renew its certification.

Subp. 3. **Executive director.** “Executive director” means the executive director of the Minnesota Nursing Home

# Expedited Rules

Workforce Standards Board.

**Subp. 4. Holiday.** “Holiday” means the following dates: New Year’s Day, January 1; Martin Luther King’s Birthday, the third Monday in January; Washington’s and Lincoln’s Birthday, the third Monday in February; Memorial Day, the last Monday in May; Juneteenth, June 19; Independence Day, July 4; Labor Day, the first Monday in September; Indigenous Peoples’ Day, the second Monday in October; Veterans Day, November 11; Thanksgiving Day, the fourth Thursday in November; and Christmas Day, December 25. A holiday is a 24-hour period comprised of the time from midnight of the date designated as a holiday to the next midnight.

**Subp. 5. Minnesota Nursing Home Workforce Standards Board Act.** The “Minnesota Nursing Home Workforce Standards Board Act” or “act” means Minnesota Statutes, sections 181.211 to 181.217.

## **5200.2010 HOLIDAY PAY.**

**Subpart 1. Holiday pay.** Beginning January 1, 2025, a nursing home worker who works any holiday shall be paid a minimum of time-and-one-half their regular hourly wage for all hours worked during the holiday.

### **Subp. 2. Modification of holiday date and time.**

**A.** The start and stop times for the 24-hour period comprising a holiday can be modified by a nursing home employer if agreed upon by a majority of affected nursing home workers or the exclusive representative of the affected nursing home workers if one exists.

**B.** A nursing home employer may substitute up to four holidays for an alternate day in the same calendar year if the substitution is agreed upon by a majority of affected nursing home workers or the exclusive representative of the affected nursing home workers if one exists.

**C.** 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.

**D.** The nursing home employer must retain a record of agreement to modify a holiday date or time under item C for a minimum of three years following the observation of the modified holiday.

## **5200.2020 NOTICE OF NURSING HOME WORKER RIGHTS.**

**Subpart 1. Posting of notice of nursing home worker rights.** Nursing home employers must provide notice informing nursing home workers of the rights and obligations provided under the act or established by the Minnesota Nursing Home Workforce Standards Board. A nursing home employer must provide notice using the same means that the nursing home employer uses to provide other legally required work-related notices to nursing home workers. Nursing home employers must, at a minimum:

**A.** post a copy of the notice at each work site where nursing home workers work and in a location where the notice is readily seen and reviewed by all nursing home workers working at the site, and take steps to ensure that the notice is not altered, defaced, or covered by other material; or

**B.** provide a paper or electronic copy of the notice to all nursing home workers and applicants for employment as a nursing home worker.

**Subp. 2. Contents of notice.** Notices of a nursing home worker’s rights and obligations must include a statement containing all nursing home employment standards established by the Minnesota Nursing Home Workforce Standards Board. Notices must also include the following statements of rights and responsibilities:

**A.** It is unlawful for a nursing home employer to discharge, discipline, penalize, interfere with, threaten, restrain, coerce, or otherwise retaliate or discriminate against a nursing home worker because the person has exercised or attempted to exercise rights granted under the act; participated in any process or proceeding under the act, including but not limited to board hearings, board or department investigations, or other related proceedings; or attended or participated in training under Minnesota Statutes, section 181.214.

**B.** It is unlawful for a nursing home employer to:

# Expedited Rules

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(1) inform another employer that a nursing home worker or former nursing home worker has engaged in activities protected under the act; or

(2) report or threaten to report the actual or suspected citizenship or immigration status of a nursing home worker, former nursing home worker, or family member of a nursing home worker to a federal, state, or local agency for exercising or attempting to exercise any right protected under the act.

C. A nursing home worker found to have experienced retaliation is entitled to back pay and reinstatement to the worker's previous position, wages, benefits, hours, and other conditions of employment.

D. A nursing home worker may individually or as part of a class action bring a civil action against a nursing home employer in district court for violations of the act or of any applicable minimum nursing home employment standards or local minimum nursing home employment standards. The civil action must be filed in the district court of the county where the violation or violations are alleged to have been committed or where the nursing home employer resides, or in any other court of competent jurisdiction.

E. In an action against nursing home employers for violations of the act, nursing home workers may seek damages and other appropriate relief provided by Minnesota Statutes, section 177.27, subdivision 7, or otherwise provided by law, including reasonable costs, disbursements, witness fees, and attorney fees. A court may also issue an order requiring compliance with the act or with the applicable minimum nursing home employment standards or local minimum nursing home employment standards.

F. 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.

G. A nursing home worker seeking information or assistance may contact the Department of Labor and Industry for further information regarding their rights, protections, and obligations. Contact information for the Department of Labor and Industry must be included in the notice.

H. Nursing home workers are required to attend trainings regarding their rights and obligations under the act, and the trainings must, at a minimum, cover the following topics:

(1) applicable compensation and working conditions standards;

(2) antiretaliation protections in place;

(3) information on how to enforce the rights and protections under parts 5200.2000 to 5200.2050 and the act and how to report violations, and the remedies available for violations of those rights, protections, and standards;

(4) contact information for the Department of Labor and Industry, the board, and any local enforcement agencies;

(5) the purposes and functions of the board and information on upcoming hearings, investigations, or other opportunities for nursing home workers to become involved in board proceedings;

(6) other rights, duties, and obligations under the act;

(7) any updated standards or changes to the information provided since the most recent training session;

(8) any other information appropriate to facilitate compliance with the act; and

(9) information on labor standards in other applicable local, state, and federal laws, rules, and ordinances regarding nursing home working conditions or nursing home worker health and safety.

I. A nursing home employer must compensate its nursing home workers for training completed as required by law and reimburse any reasonable travel expenses associated with attending training sessions not held on the premises of the nursing home.

J. The nursing home employer shall provide the notices required under this part in the chosen language of a

nursing home worker upon the nursing home worker's request.

**5200.2030 APPLICATION FOR CERTIFICATION AND RENEWAL.**

Subpart 1. **Requirements to become a certified worker organization.** To become a certified worker organization, an applicant must:

- A. meet the definition of worker organization in Minnesota Statutes, section 181.211;
- B. submit complete information satisfying the application requirements under subpart 2; and
- C. demonstrate the ability to provide training as follows:

(1) the training must follow curriculum established by the board and include a synchronous portion for fielding questions from nursing home workers;

(2) the training, follow-up written materials, and responses to inquiries are in a language in which a nursing home worker is proficient;

(3) the training records must be provided to the nursing home; and

(4) the records of workers who attend a training, including when the workers were trained, are retained by the worker organization for five years.

Subp. 2. **Application.**

A. To become certified, an applicant must file with the board an application in a format prescribed by the board that includes:

- (1) the applicant's legal business name;
- (2) the applicant's federal employer tax identification number;
- (3) a list of the applicant's board of directors;
- (4) an affirmation that the applicant is exempt from federal income taxation under section 501(c)(3), 501(c)(4), or 501(c)(5) of the Internal Revenue Code;
- (5) an affirmation that the applicant is not dominated or interfered with by any nursing home employer within the meaning of United States Code, title 29, section 158a(2);
- (6) an explanation of and evidence demonstrating that the applicant has at least five years of experience engaging with and advocating for nursing home workers;
- (7) an affirmation that data received from a nursing home employer in connection to the training of its nursing home workers will be maintained according to any applicable data security law and used only for the purposes of Minnesota Statutes, section 181.214, subdivision 5;
- (8) information demonstrating that the applicant will follow the curriculum established by the board and otherwise satisfy the requirements of Minnesota Statutes, section 181.214, including:
  - (a) the training materials the applicant proposes to use;
  - (b) the follow-up materials the applicant proposes to send to nursing home workers after trainings, which must include a certificate of completion formatted in a manner prescribed by the board; and
  - (c) an affirmation that the applicant will provide training, follow-up written materials, and responses to inquiries in a language in which a nursing home worker is proficient;
- (9) an affirmation that the applicant will update its curriculum as required by the board;

# Expedited Rules

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(10) an affirmation that the applicant will provide nursing homes with applicable training records; and

(11) an affirmation that the information provided in the application is true.

B. An applicant may request that the executive director or the executive director's designee examine parts of the application and answer questions related to eligibility.

**Subp. 3. Renewal application.** Within 30 days of updated standards becoming effective, the board must open a renewal application period. The renewal application period must last 60 days, during which time a certified worker organization must apply for renewal if it wishes to remain certified. The applicant must file with the board a complete renewal application in a format prescribed by the board that includes:

A. updates to any information previously provided to the board;

B. an affirmation that the applicant has reviewed any updated standards and curriculum established by the board;

C. an affirmation that the applicant will educate its trainers on the updated standards and curriculum;

D. an affirmation that data received from a nursing home employer in connection to the training of its nursing home workers will be maintained according to any applicable data security law and used only for the purposes set forth in Minnesota Statutes, section 181.214, subdivision 5; and

E. an affirmation that all information in the application is true.

## **5200.2040 APPROVAL, DENIAL, REVOCATION, AND CESSATION OF CERTIFICATION.**

### **Subpart 1. Decision on a worker organization's application or renewal application.**

A. Within 90 days of receiving an application for certification or renewal of certification, the board must approve or deny the application.

B. When an initial application is approved, the board must assign a unique identification number for the certified worker organization, which must be used for any subsequent renewals.

### **Subp. 2. Denial or revocation of certification.**

A. The board may deny an application for certification or recertification, or revoke certification, if an organization does any of the following:

(1) provides false or incomplete information to the board;

(2) fails to meet the necessary organizational requirements under the law;

(3) fails to provide trainings as required;

(4) fails to provide training records to nursing homes; or

(5) commits acts that demonstrate incompetence, untrustworthiness, financial irresponsibility, or dishonesty.

B. The executive director or the executive director's designee may receive complaints regarding alleged violations of this part. The executive director or the executive director's designee shall investigate the validity of the complaint and recommend to the board whether revocation is appropriate.

C. If an application is denied, the applicant may not submit another application within six months of the denial.

D. If a certification is revoked, the applicant may not submit another application within one year of the revocation.

### **Subp. 3. Cessation of certification.**

# Expedited Rules

A. 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.

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

(4) all nursing home employers have received the proper documentation of worker attendance at trainings.

## **5200.2050 BOARD RESOURCES.**

A. The board must maintain a current list of certified worker organizations on its public website.

B. The list must include information about each certified worker organization's ability to provide trainings in various geographic locations, ability to train virtually, availability to train during various work shifts, and contact information for the person responsible for ongoing communication with nursing home employers.

## **Expedited Emergency Rules**

Provisions exist for the Commissioners of some state agencies to adopt expedited emergency rules when conditions exist that do not allow the Commissioner to comply with the requirements for emergency rules. The Commissioner must submit the rule to the attorney general for review and must publish a notice of adoption that includes a copy of the rule and the emergency conditions. Expedited emergency rules are effective upon publication in the *State Register*, and may be effective up to seven days before publication under certain emergency conditions.

Expedited emergency rules are effective for the period stated or up to 18 months. Specific *Minnesota Statute* citations accompanying these expedited emergency rules detail the agency's rulemaking authority.

**KEY: Proposed Rules** - Underlining indicates additions to existing rule language. ~~Strikeouts~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

**Adopted Rules** - Underlining indicates additions to proposed rule language. ~~Strikeout~~ indicates deletions from proposed rule language.

## **Department of Natural Resources**

### **Adopted Expedited Emergency Game and Fish Rules: 2024 Deer Seasons and Special Hunts**

Notice is hereby given that the above entitled rules have been adopted through the process prescribed by *Minnesota Statutes*, section 84.027, subdivision 13(b). The statutory authority for the content of the rules is *Minnesota Statutes*, 84.027, subdivision 13; 97A.045, subdivision 11; 97A.091 subdivision 2; 97A.401 subdivision 4; 97A.535 subdivision 2; 97B. 11 1; 97B.301; 97B.311.

The following conditions do not allow compliance with *Minnesota Statutes*, sections 97A.0451 to 97A.0459: Population data needed to set bag limits for specific deer permit areas are not available until spring of each year. Special hunts to reduce deer density in municipalities, state parks and other areas where hunting is not normally allowed are

Docket No.— 28-9001-40213

**Exhibit B2—Notice of Intent to  
Adopt Expedited Rules, U.S. mail and  
electronic rulemaking lists and additional  
notice**

## Minnesota Nursing Home Workforce Standards Board

### NOTICE OF INTENT TO ADOPT EXPEDITED PERMANENT RULES WITHOUT A PUBLIC HEARING

**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.**

**Introduction.** The Minnesota Nursing Home Workforce Standards Board (“Board”) intends to adopt rules under the expedited rulemaking process following the rules of the Office of Administrative Hearings, *Minnesota Rules*, part 1400.2410, and the Administrative Procedure Act, *Minnesota Statutes*, section 14.389. You may submit written comments on the proposed expedited rules until September 25, 2024.

**Contact Person.** Submit comments or questions on the rules to: Leah Solo at the Department of Labor and Industry, 443 Lafayette Rd. N., St. Paul, MN 55155, phone (651) 284-5076, and email to [dli.rules@state.mn.us](mailto:dli.rules@state.mn.us). Comments must be in writing. **You may also review the proposed rule and submit written comments via the Office of Administrative Hearings Rulemaking eComments website at <https://minnesotaoah.granicusideas.com/discussions>.**

**Subject of the Expedited Rules and Statutory Authority.** The proposed expedited rules establish holiday pay provisions for nursing home workers; certification criteria for worker organizations; and minimum notice posting requirements for nursing home employers.

As to holiday pay, the proposed rules establish minimum nursing home worker pay of time-and-one-half for all hours worked on certain holidays. The proposed rules also allow for some modification to the dates and times of prescribed holidays.

As to certification criteria, the proposed rules establish the criteria worker organizations must meet to become certified to conduct nursing home worker trainings under Minnesota Statutes, section 181.214. The proposed rules also establish the application and renewal process for certification, and prescribe processes for the revocation of certification and cessation of certification.

As to minimum notice posting requirements, Minnesota Statutes, section 181.215, subdivision 1, requires nursing home employers to post notices informing nursing home workers of the minimum nursing home employment standards and local minimum standards. The proposed rules outline the posting obligations for nursing home employers, including minimum content and posting requirements.

The statutory authority to adopt the proposed rules under the expedited rulemaking process is Minnesota Statutes, section 181.213, subdivision 1 (granting authority to adopt rules on the compensation of nursing home workers); Minnesota Statutes, section 181.213, subdivision 3 (granting authority to adopt new rules for minimum nursing home employment standards); Minnesota Statutes, section 181.214, subdivision 1 (granting authority to adopt rules for certification of worker organizations); and Minnesota Statutes, section 181.215, subdivision 2 (granting authority to adopt notice posting requirements).



A copy of the proposed rules is published in the State Register and attached to this notice as mailed. The proposed expedited rules may be viewed at <https://www.dli.mn.gov/about-department/rulemaking/nhwsb-rulemaking-expedited-rules-holiday-pay>

**Comments.** You have until 4:30 p.m. on September 25, 2024, to submit written comment in support of or in opposition to the proposed expedited rules and any part or subpart of the rules. Your comment must be in writing and received by the agency contact person or submitted on the Office of Administrative Hearings Rulemaking eComments website by the due date. The Board encourages comment. Your comment should identify the portion of the proposed expedited rules addressed and the reason for the comment. In addition, you are encouraged to propose any change proposed. You should also make any comments that you have on the legality of the proposed rules during this comment period. **Important:** Comments will be made available to the public. Please only submit information that you wish to make available publicly.

**Modifications.** The Board may modify the proposed expedited rules using either of two avenues: The agency may modify the rules directly so long as the modifications do not make them “substantially different” as defined in Minnesota Statutes, section 14.05, subdivision 2, paragraphs (b) and (c); or the agency may adopt substantially different rules if it follows the procedure under Minnesota Rules, part 1400.2110. If the final rules are identical to the rules originally published in the State Register, the agency will publish a notice of adoption in the State Register. If the final rules are different from the rules originally published in the State Register, the agency must publish a copy of the changes in the State Register. If the proposed expedited rules affect you in any way, the Board encourages you to participate in the rulemaking process.

**Alternative Format.** Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request, please contact the Board contact person at the address or telephone number listed above.

**Lobbyist Registration.** *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. You may direct questions regarding this requirement to the Campaign Finance and Public Disclosure Board at: Suite #190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 539-1180 or 18006573889.

**Adoption and Review of Expedited Rules.** The Board may adopt the rules at the end of the comment period. The Board will then submit rules and supporting documents to the Office of Administrative Hearings for review for legality. You may ask to be notified of the date that the Board submits the rules. If you want to be so notified or want to receive a copy of the adopted rules, or want to register with the Board to receive notice of future rule proceedings, submit your request to the Board contact person listed above.

Date

August 13, 2024

  
\_\_\_\_\_  
Jamie Gulley, Chair

Minnesota Nursing Home Workforce Standards Board

Docket No.– 28-9001-40213

# Exhibit C1- Certificate of mailing and accuracy of mailing list

**Minnesota Nursing Home Workforce Standards Board**

**CERTIFICATE OF MAILING THE NOTICE OF INTENT TO ADOPT EXPEDITED  
RULES WITHOUT A PUBLIC HEARING TO THE RULEMAKING MAILING LIST**

**Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice  
Posting Requirements, Minnesota Rules, Part 5200.2000; Revisor's ID Number RD-04870**

I certify that on August 23, 2024, at least 33 days before the end of the comment period, at St. Paul, Ramsey County, Minnesota, I mailed the Notice of Intent to Adopt Expedited Rules without a Hearing and the proposed rules, by depositing a copy in the United States mail with postage prepaid, to all persons and associations on the rulemaking mailing list established by Minnesota Statutes, section 14.14, subdivision 1a. Copies of the Notice and of the mailing list are attached to this Certificate.


*Margaret Charpentier*

\_\_\_\_\_  
Margaret Charpentier

Legal Services, Minnesota Department of Labor and  
Industry

**Minnesota Nursing Home Workforce Standards Board****CERTIFICATE OF ACCURACY OF THE MAILING LIST****Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements, Minnesota Rules, Part 5200.2000; Revisor's ID Number RD-04870**

I certify that the list of persons and associations that have requested to receive rulemaking updates by U.S. mail, by having their names placed on the Minnesota Nursing Workforce Standards Board's rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a, is accurate, complete, and current as of August 20, 2024. A copy of the mailing list is attached to this Certificate.

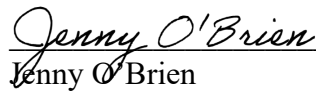
  
\_\_\_\_\_  
Sonya Herr  
Legal Services, Minnesota Department of Labor and  
Industry

Docket No.– 28-9001-40213

## Exhibit C2- Certificate of emailing and accuracy of emailing list

**Minnesota Nursing Home Workforce Standards Board****CERTIFICATE OF E-MAILING THE NOTICE OF INTENT TO ADOPT EXPEDITED RULES WITHOUT A PUBLIC HEARING TO THE RULEMAKING MAILING LIST****Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements, Minnesota Rules, Part 5200.2000; Revisor's ID Number RD-04870**

I certify that on August 23, 2024, at St. Paul, Ramsey County, Minnesota, I sent the Notice of Intent to Adopt Expedited Rules without a Hearing as an electronic copy, by email, to all persons and associations on the rulemaking mailing list established by Minnesota Statutes, section 14.14, subdivision 1a, that have requested to receive rulemaking updates electronically. The email included a link to the proposed rules on the Board's docket page.



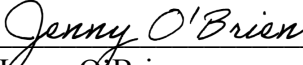
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Jenny O'Brien

Communications, Minnesota Department of Labor and Industry

**Minnesota Nursing Home Workforce Standards Board**<sup>[CK(1)]</sup><sub>[EP(2)]</sub>**CERTIFICATE OF ACCURACY OF THE E-MAILING LIST****Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements, Minnesota Rules, Part 5200.2000; Revisor's ID Number RD-04870**

I certify that the list of persons and associations that have requested to receive rulemaking updates electronically by having their names placed on the Nursing Home Workforce Standards Boards' rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a, is accurate, complete, and current as of August 23, 2024.



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Jenny O'Brien

Communications, Minnesota Department of Labor and Industry

Docket No.– 28-9001-40213

# Exhibit D1- Additional notice and electronic rulemaking list transmittal



**From:** Minnesota Department of Labor and Industry <MNDLI@public.govdelivery.com>

**Sent:** Monday, August 26, 2024 9:02:40 AM

**To:** Solo, Leah (She/They) (DLI) <Leah.Solo@state.mn.us>

000037

**Subject:** Rulemaking notice: Minnesota Nursing Home Workforce Standards Board

minnesota department of labor and industry



## **Rulemaking notice: Minnesota Nursing Home Workforce Standards Board**

*You are receiving this email message because, under the Minnesota Administrative*

*Procedures Act, each Minnesota agency must make reasonable efforts to notify persons or classes of persons who might be affected by the rule being proposed. The Minnesota Nursing Home Workforce Standards Board has identified you as a person or organization that might be affected by the proposed rules or who has requested this notification.*

## **Proposed expedited rules modifying certification criteria, notice posting requirements and holiday pay rules for nursing home workers, Minnesota Rules part 5200.2000 through 5200.2050.**

The Minnesota Nursing Home Workforce Standards Board (NHSWB) intends to adopt proposed expedited rules modifying certification criteria, notice posting requirements and holiday pay rules, Minnesota Rules, part 5200.2000 through 5200.2050.

The following document related to this rulemaking will be published in the Aug. 26, 2024, edition of the *State Register*.

- Notice of Intent to Adopt Proposed Permanent Expedited Rules without a Public Hearing
- Rules: Proposed expedited permanent rules modifying certification criteria, notice posting requirements and holiday pay rules for nursing home workers

The notice provides full details about how to submit comments.

A copy of the notice and the proposed rules, along with additional information about the status of the rulemaking, are on the NHWSB [docket page](#).

The comment period for this rulemaking ends at **4:30 p.m., Wednesday, Sept. 25, 2024**.

### **For more information**

For more information, send an email message to [dli.rules@state.mn.us](mailto:dli.rules@state.mn.us).

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Update your subscriptions, modify your password or email address or stop subscriptions at any time on your [Subscriber Preferences Page](#). You will need to use your email address to log in. This service is provided by the [Minnesota Department of Labor and Industry](#).

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This email was sent to leah.solo@state.mn.us using GovDelivery Communications Cloud on behalf of:  
Minnesota Department of Labor and Industry · 443 Lafayette Road N. · Saint Paul, MN 55155



Docket No.– 28-9001-40213

# Exhibit D2 – Certificates of additional notice

**Minnesota Nursing Home Workforce Standards Board****CERTIFICATE OF GIVING ADDITIONAL NOTICE BY MAIL****Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements, Minnesota Rules, Part 5200.2000; Revisor's ID Number RD-04870**

I certify that on August 23, 2024, at least 33 days before the end of the comment period, at St. Paul, Ramsey County, Minnesota, additional notice was given according to person or classes of persons who may be affected by the rules being proposed. Specifically, I mailed the Notice of Intent to Adopt Expedited Rules without a Hearing and the proposed rules, by depositing a copy in the United States mail with postage prepaid, to the following:

- Recipients listed on the Nursing Home Workforce Standards Board's Nursing Care Provider List
- Recipients listed on the Nursing Home Workforce Standards Board's Union List; and
- Recipients listed on the Nursing Home Workforce Standards Board's Employer Advocates List

The Board contact lists are available, but not are not attached as recipients' information is not public pursuant to Minnesota Statutes, Sec. 13.356.

*Margaret Charpentier*

Margaret Charpentier

Legal Services, Minnesota Department of Labor and  
Industry

**Minnesota Nursing Home Workforce Standards Board****CERTIFICATE OF GIVING ADDITIONAL NOTICE BY ELECTRONIC MAIL****Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements, Minnesota Rules, Part 5200.2000; Revisor's ID Number RD-04870**

I certify that on August 23, 2024, at St. Paul, Ramsey County, Minnesota, notice was given according to person or classes of persons who may be affected by the rules being proposed as part of an Additional Notice Plan. Specifically, I accomplished this by sending an electronic copy of the Notice of Intent to Adopt Expedited Rules without a Hearing, and links to the proposed rule and Department's docket page to the following:

- Recipients listed on the Nursing Home Workforce Standards Board's Nursing Care Provider List
- Recipients listed on the Nursing Home Workforce Standards Board's Union List; and
- Recipients listed on the Nursing Home Workforce Standards Board's Employer Advocates List
- Recipients listed on the Nursing Home Workforce Standards Board's Additional Contacts List.

The Board contact lists are available, but not are not attached as recipients' information is not public pursuant to Minnesota Statutes, Sec. 13.356.



---

Jenny O'Brien

Communications, Minnesota Department of Labor and Industry

Docket No.– 28-9001-40213

# Exhibit E – Written comments on proposed rule

**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](#)

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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](mailto: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](#)

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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](http://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 workers<sup>1</sup>. 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.<sup>2</sup> 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](#)

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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](http://www.bethanyonthelake.com)



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](mailto: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.



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](#)

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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 your 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](http://www.bvhc.sfhs.org)



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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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See the attached comment in writing.

Thank you,



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**Brandi Paulzine**

Executive Director

P : 507.263.6062

F : 507.263.6085

[bpaulzine@cannonrivers.com](mailto:bpaulzine@cannonrivers.com)

900 Main St. W

Cannon Falls, MN 55009

**CannonRivers.com**



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**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, multiple nursing homes and assisted livings have closed their doors displacing seniors and staff in the past year 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<sup>1</sup>. 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.

---

<sup>1</sup> Minnesota State Demographer, 2016. [https://mn.gov/admin/assets/demographic-considerations-planning-for-mn-leaders-msdc-march2016\\_tcm36-219453.pdf](https://mn.gov/admin/assets/demographic-considerations-planning-for-mn-leaders-msdc-march2016_tcm36-219453.pdf)



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.<sup>2</sup> 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.

---

<sup>2</sup> 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>





### 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 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,

A handwritten signature in black ink, appearing to read "B. LeLoup".

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](#)

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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](mailto:Dalton.Danielson@Allina.com)

Mail Route 10807 • PO Box 43 • Minneapolis, MN 55440



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**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](#)

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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](mailto:justinboldt@ecumen.org)



Ecumen North Branch | 5379 383rd Street, North Branch, MN 55056

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**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](#)

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Please see attachment. Thank you!

**Rachael Evers**

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



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**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

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

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.<sup>2</sup> 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

<sup>1</sup> Minnesota State Demographer, 2016. [https://mn.gov/admin/assets/demographic-considerations-planning-for-mn-leaders-msdc-march2016\\_tcm36-219453.pdf](https://mn.gov/admin/assets/demographic-considerations-planning-for-mn-leaders-msdc-march2016_tcm36-219453.pdf)

<sup>2</sup> 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>



consider a more realistic implementation date that show that they do not understand provide operations. MN 56560  
 challenges they face in implementing major changes in an unrealistic time frame. 218-291-2230 | fax: 218-477-3250

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](#)

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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.

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](#)

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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](mailto: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.

A Pennsylvania Limited Liability Partnership



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- 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”)<sup>1</sup> 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,

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<sup>1</sup> The Proposed Rules do not address the distinction between “exempt” and “non-exempt” employees as defined by the FLSA.



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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 employees 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.<sup>2</sup> 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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<sup>2</sup> "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.



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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





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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





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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).<sup>3</sup> 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

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<sup>3</sup> 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.



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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



September 24, 2024

Page 8

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”).



September 24, 2024  
Page 9

**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,

A handwritten signature in black ink, appearing to read "RC Castle", with a long horizontal line extending to the right.

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-minute break

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 be 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](#)

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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 218.873.1180**

[chet.fishel@sfhs.org](mailto:chet.fishel@sfhs.org)

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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 4<sup>th</sup>, 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



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.

*In Christ's Love, Everyone Is Someone.*

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,

A handwritten signature in black ink that reads "Laura Salonek". The signature is written in a cursive, flowing style.

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](#)

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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](mailto:lsalonek@good-sam.com) | [www.good-sam.com/howardlake](http://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](#)

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Please see attached. Thank you – Mark Anderson

Mark Anderson

Administrator

NHA, LALD

Good Samaritan Society - Inver Grove Heights

1301 50<sup>th</sup> Street East

Inver Grove Heights, MN 55076

651-289-0685

Good Samaritan Society - Stillwater

1119 Owens Street North

Stillwater, MN 55082

651-666-4682



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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 dual Administrator for two nursing homes in Minnesota, Good Samaritan Society – Inver Grove Heights and Good Samaritan Society - Stillwater.

Nursing homes are heavily 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, Dual 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](#)

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**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.



-----  
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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,

A handwritten signature in black ink, appearing to read "Katie Perry". The signature is fluid and cursive, with the first name "Katie" written in a larger, more prominent script than the last name "Perry".

Katie Perry  
Chief Operating Officer/Executive Vice President  
[Katie.perry@knutenelson.org](mailto: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](#)

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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

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**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

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**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



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,

A handwritten signature in black ink, appearing to read "Kathy M. Dobson", with a long horizontal flourish extending to the right.

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](#)

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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

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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  
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](#)

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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](http://WWW.MONARCHMN.COM)







September 25, 2024

**VIA EMAIL ONLY**

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

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.

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](mailto: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](#)

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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](mailto: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







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<sup>1</sup>. 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.

---

<sup>1</sup> Minnesota State Demographer, 2016. [https://mn.gov/admin/assets/demographic-considerations-planning-for-mn-leaders-msdc-march2016\\_tcm36-219453.pdf](https://mn.gov/admin/assets/demographic-considerations-planning-for-mn-leaders-msdc-march2016_tcm36-219453.pdf)



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.<sup>2</sup> 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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<sup>2</sup> 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,

A handwritten signature in black ink, appearing to read "Dennis J. DeJager". The signature is fluid and cursive, written over a light blue horizontal line.

Dennis J. DeJager, LNHA

**From:** [Dennis DeJager](#)  
**To:** [RULES, DLI \(DLI\)](#)  
**Date:** Friday, August 30, 2024 10:06:04 AM  
**Attachments:** [20240830095556864.pdf](#)

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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](#)

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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**

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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](#)

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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](mailto:Elizabeth.letich@sfhs.org)



801 Nevada Avenue  
Morris MN 56267

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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, **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 (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](mailto: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

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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 15<sup>th</sup> Ave. SW  
Austin, MN 55912  
Direct: 507-434-7216  
Main: 507-437-4594  
[director@stmarksliving.org](mailto:director@stmarksliving.org)



**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 undue 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](mailto: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](#)

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Ross Rivard  
Administrator, LNHA

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

Ph: 651-235-4386

[WWW.MONARCHMN.COM](http://WWW.MONARCHMN.COM)



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**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](#)

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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](http://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](mailto: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

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

---

**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

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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](http://www.monarchmn.com)





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](mailto: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



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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Ms. Solo

Please see the attached comment letter.

Thank you!

Nathan Schema

Good Samaritan – President & CEO



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**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-8475-06185c4cba4211111111.png](#)  
[star-trib-final\\_76501ad1-f50d-41d6-884e-7acbee521d151.png](#)  
[Estimate Annual Cost of Mandated Holidays v1.xlsx](#)  
[NHWSB CommentLetterHolidayCWOPostingRequirements.docx](#)

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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](mailto:kim.tebrugge@thegoodmangroup.com)



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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
<b>Estimated Annual Cost of Mandated Holidays for Your Nursing Facility</b>	<b>\$24,946</b>



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
<b>Estimated Annual Cost of Mandated Holidays for Your Nursing Facility</b>	

**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 up 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](#)

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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 218.873.1180**

[chet.fishel@sfhs.org](mailto:chet.fishel@sfhs.org)

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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 4<sup>th</sup>, 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](#)

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Attached please find my comments.

Thank you!

**Kathy Holland**  
**Administrator**  
Villas at New Brighton  
825 1<sup>st</sup> Avenue NE  
New Brighton, MN 55112  
612-257-0254 cell  
[WWW.MONARCHMN.COM](http://WWW.MONARCHMN.COM)



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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](mailto: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.



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  
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

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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

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You don't often get email from fred.struzyk@hilltophealthcc.com. [Learn why this is important](#)

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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

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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

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.<sup>2</sup> 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

<sup>1</sup> Minnesota State Demographer, 2016. [https://mn.gov/admin/assets/demographic-considerations-planning-for-mn-leaders-msdc-march2016\\_tcm36-219453.pdf](https://mn.gov/admin/assets/demographic-considerations-planning-for-mn-leaders-msdc-march2016_tcm36-219453.pdf)

<sup>2</sup> 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>



consider a more realistic implementation date that show that they do not understand provide operations. MN 56560  
 challenges they face in implementing major changes in an unrealistic time frame. 218-291-2230 | fax: 218-477-3250

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]*



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.



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<sup>1</sup>. 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.<sup>2</sup> 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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<sup>2</sup> 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>

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 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

**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.

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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 employ 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

**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.

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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





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<sup>1</sup>. 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.

<sup>1</sup> Minnesota State Demographer, 2016. [https://mn.gov/admin/assets/demographic-considerations-planning-for-mn-leaders-msdc-march2016\\_tcm36-219453.pdf](https://mn.gov/admin/assets/demographic-considerations-planning-for-mn-leaders-msdc-march2016_tcm36-219453.pdf)

Rossy and Richard Shaller Family  
Sholom East Campus, St. Paul

Shirley Chapman Sholom Home East  
Bentson Family Assisted Living Residence  
Jay & Rose Phillips Center for Memory Care  
Harry & Jeanette Weinberg Apartments  
David Feinberg Vitality & Aquatics Center

Sholom Home Care  
Sholom Johnson Hospice Agency  
Twin Cities Metro Area

Norman and Lisette Ackerberg Family  
Sholom West Campus, St. Louis Park

Sholom Home West  
Knollwood Place Apartments  
Roitenberg Family Assisted Living Residence  
Leo & Doris Hodroff Pavilion for Memory Care  
Menorah West  
Menorah Plaza

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.<sup>1</sup> 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  
Chief Executive Officer

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<sup>2</sup> 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>

*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<sup>1</sup>. 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

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<sup>1</sup> Minnesota State Demographer, 2016. [https://mn.gov/admin/assets/demographic-considerations-planning-for-mn-leaders-msdc-march2016\\_tcm36-219453.pdf](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**

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.<sup>2</sup> 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.

### **City/County challenges**

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<sup>2</sup> 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

**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.

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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](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://inzanerresearch.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.

**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.

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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

**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.

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**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 unknown 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.



*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.<sup>1</sup> 60,000 Minnesotans will turn 65 every year through 2030, when over 20% of our state

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<sup>1</sup> 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>.

Executive Director Leah Solo  
September 24, 2024  
Page 2 of 8

population will be made up of older adults.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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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<sup>2</sup> Minnesota State Demographic Center, *Aging - Key Findings* (Oct. 13, 2023), available at <https://mn.gov/admin/demography/data-by-topic/aging/>.

<sup>3</sup> 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>.

<sup>4</sup> 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>.

<sup>5</sup> Long-Term Care Imperative, *LTC Imperative Legislative Summary* (2024).

Executive Director Leah Solo  
 September 24, 2024  
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## Comments on Holiday Pay Rules <sup>6</sup>

### *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.<sup>7</sup> 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.<sup>8</sup>

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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<sup>6</sup> 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.

<sup>7</sup> Minn. Stat. § 181.213, subd. 2(d)(3) (emphasis added).

<sup>8</sup> *Id.*



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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.<sup>9</sup>

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,<sup>10</sup> (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 **\$12 million dollars per year**. 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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<sup>9</sup> Minn. Stat. § 181.213, subd. 2(d).

<sup>10</sup> 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.

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### *ADMINISTRATIVE 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 Statutes 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.”<sup>11</sup>

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 IMPLEMENTATION 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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<sup>11</sup> Minn. Stat. § 181.213, subd. 2(d) (emphasis added).

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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*

**Issue:** 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.

Comment: 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.<sup>12</sup> 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. *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.

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**

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<sup>12</sup> Proposed rule part 5200.2040, subp. 2.

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

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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<sup>13</sup> Proposed rule part 5200.2040, subp. 3 (emphasis added).

Executive Director Leah Solo  
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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,

A handwritten signature in cursive script that reads "Kari Thurlow".

Kari Thurlow,  
President and CEO

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

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 workers<sup>1</sup>. 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



515 W 5TH AVE  
GRAND MARAIS, MN 55604-3017  
(218) 387-3040

Submitted Electronically via  
Minnesota Office of Hearings eComments

September 25, 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

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.

Leah Solo, Executive Director  
Nursing Home Workforce Standards Board  
September 25, 2024  
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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 are 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.


Leah Solo, Executive Director  
Nursing Home Workforce Standards Board  
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**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](mailto:Kimber.wraalstad@northshorehealthgm.org).  
Thank you for your consideration of my comments.

Sincerely,



Kimber L. Wraalstad, FACHE  
CEO/Administrator

*Submitted Electronically*

September 25<sup>th</sup>, 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<sup>1</sup>. 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

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<sup>1</sup> Minnesota State Demographer, 2016. [https://mn.gov/admin/assets/demographic-considerations-planning-for-mn-leaders-msdc-march2016\\_tcm36-219453.pdf](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

*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.<sup>1</sup> 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

---

<sup>1</sup> 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>



SERVICE EMPLOYEES  
INTERNATIONAL UNION  
CLC

**SEIU Minnesota  
State Council**

Brian Elliott  
Executive Director

2233 University Avenue West  
Suite 422  
Saint Paul, MN 55114-1629

651.203.0401  
Fax: 651.203.0405

**Healthcare Minnesota  
& Iowa**

Jamie Gulley  
President

651.294.8100  
fax: 651.294.8200

**Local 284**

Kelly Gibbons  
Executive Director

651.256.9100  
fax: 651.256.9119

**Local 26**

Greg Nammacher  
President

612.331.8336  
fax: 612.331.8347

**Workers United**

Antonio Diaz  
Regional Political Coordinator

312.738.6100

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,

A handwritten signature in black ink, appearing to read "Brian Elliott", with a long horizontal flourish extending to the right.

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

PARTICIPANTS

# 1

TOPICS

# 16

ANSWERS

# 0

REPLIES

# 1

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.

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**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

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
**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

## 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

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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.

## 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

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**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

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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

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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](mailto: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](#)

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**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.

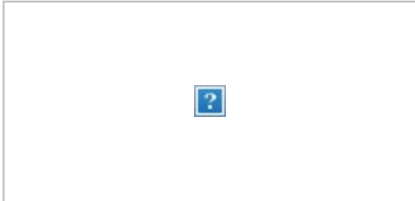
This mandate has not been thoroughly vetted and thought through to implement in just a few months. Please consider opening up for comments so ACTUAL STAFF from both the metro and outstate can provide feedback on this proposal and advocate with our representatives for additional funding.

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](mailto:JohnLinn@ecumen.org)



Ecumen St. Benedict's Community — St. Cloud | 1810 Minnesota Blvd. SE, St. Cloud, MN 56304

[ecumen.org/SBC-StCloud](http://ecumen.org/SBC-StCloud) | [Facebook](#) | 320-252-0010

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**From:** [Karen Martin](#)  
**To:** [RULES, DLI \(DLI\)](#)  
**Subject:** Re: NHSWB  
**Date:** Tuesday, September 10, 2024 9:39:12 AM

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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

---

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I would appreciate a more details or a representative to understand better. Thanks.

Docket No.– 28-9001-40213

Exhibit F – *Not enclosed*: notice of withdrawal of hearing request. This is not enclosed because no hearing was required under Minn. Stat. § 14.389, subd. 5, and therefore a notice of withdrawal of hearing request was not required under Minn. Stat. § 14.25, subd. 2

Docket No.– 28-9001-40213

## Exhibit G – Adopted Rule

1.1 **Nursing Home Workforce Standards Board**

1.2 **Adopted Expedited Permanent Rules Modifying Certification Criteria, Notice Posting**  
1.3 **Requirements, And Holiday Pay Rules For Nursing Home Workers**

1.4 **5200.2000 DEFINITIONS.**

1.5 Subpart 1. **Scope.** Unless otherwise defined in this part, the terms used in parts  
1.6 5200.2000 to 5200.2050 have the meanings given in Minnesota Statutes, section 181.211.

1.7 Subp. 2. **Applicant.** "Applicant" means a worker organization that applies to become  
1.8 a certified worker organization or renew its certification.

1.9 Subp. 3. **Executive director.** "Executive director" means the executive director of  
1.10 the Minnesota Nursing Home Workforce Standards Board.

1.11 Subp. 4. **Holiday.** "Holiday" means the following dates: New Year's Day, January 1;  
1.12 Martin Luther King's Birthday, the third Monday in January; Washington's and Lincoln's  
1.13 Birthday, the third Monday in February; Memorial Day, the last Monday in May; Juneteenth,  
1.14 June 19; Independence Day, July 4; Labor Day, the first Monday in September; Indigenous  
1.15 Peoples' Day, the second Monday in October; Veterans Day, November 11; Thanksgiving  
1.16 Day, the fourth Thursday in November; and Christmas Day, December 25. A holiday is a  
1.17 24-hour period comprised of the time from midnight of the date designated as a holiday to  
1.18 the next midnight.

1.19 Subp. 5. **Minnesota Nursing Home Workforce Standards Board Act.** The  
1.20 "Minnesota Nursing Home Workforce Standards Board Act" or "act" means Minnesota  
1.21 Statutes, sections 181.211 to 181.217.

1.22 **5200.2010 HOLIDAY PAY.**

1.23 Subpart 1. **Holiday pay.** Beginning January 1, 2025, a nursing home worker who  
1.24 works any holiday shall be paid a minimum of time-and-one-half their regular hourly wage  
1.25 for all hours worked during the holiday.



2.1           Subp. 2. **Modification of holiday date and time.**

2.2           A. The start and stop times for the 24-hour period comprising a holiday can be  
2.3 modified by a nursing home employer if agreed upon by a majority of affected nursing  
2.4 home workers or the exclusive representative of the affected nursing home workers if one  
2.5 exists.

2.6           B. A nursing home employer may substitute up to four holidays for an alternate  
2.7 day in the same calendar year if the substitution is agreed upon by a majority of affected  
2.8 nursing home workers or the exclusive representative of the affected nursing home workers  
2.9 if one exists.

2.10          C. Any agreement to modify a holiday date or time must be made in the calendar  
2.11 year preceding the start of the calendar year in which the modified holiday is observed.  
2.12 There must be written record of an agreement under this item.

2.13          D. The nursing home employer must retain a record of agreement to modify a  
2.14 holiday date or time under item C for a minimum of three years following the observation  
2.15 of the modified holiday.

2.16   **5200.2020 NOTICE OF NURSING HOME WORKER RIGHTS.**

2.17          Subpart 1. **Posting of notice of nursing home worker rights.** Nursing home employers  
2.18 must provide notice informing nursing home workers of the rights and obligations provided  
2.19 under the act or established by the Minnesota Nursing Home Workforce Standards Board.  
2.20 A nursing home employer must provide notice using the same means that the nursing home  
2.21 employer uses to provide other legally required work-related notices to nursing home  
2.22 workers. Nursing home employers must, at a minimum:

2.23          A. post a copy of the notice at each work site where nursing home workers work  
2.24 and in a location where the notice is readily seen and reviewed by all nursing home workers

3.1 working at the site, and take steps to ensure that the notice is not altered, defaced, or covered  
3.2 by other material; or

3.3 B. provide a paper or electronic copy of the notice to all nursing home workers  
3.4 and applicants for employment as a nursing home worker.

3.5 Subp. 2. **Contents of notice.** Notices of a nursing home worker's rights and obligations  
3.6 must include a statement containing all nursing home employment standards established  
3.7 by the Minnesota Nursing Home Workforce Standards Board. Notices must also include  
3.8 the following statements of rights and responsibilities:

3.9 A. It is unlawful for a nursing home employer to discharge, discipline, penalize,  
3.10 interfere with, threaten, restrain, coerce, or otherwise retaliate or discriminate against a  
3.11 nursing home worker because the person has exercised or attempted to exercise rights  
3.12 granted under the act; participated in any process or proceeding under the act, including but  
3.13 not limited to board hearings, board or department investigations, or other related  
3.14 proceedings; or attended or participated in training under Minnesota Statutes, section 181.214.

3.15 B. It is unlawful for a nursing home employer to:

3.16 (1) inform another employer that a nursing home worker or former nursing  
3.17 home worker has engaged in activities protected under the act; or

3.18 (2) report or threaten to report the actual or suspected citizenship or  
3.19 immigration status of a nursing home worker, former nursing home worker, or family  
3.20 member of a nursing home worker to a federal, state, or local agency for exercising or  
3.21 attempting to exercise any right protected under the act.

3.22 C. A nursing home worker found to have experienced retaliation is entitled to  
3.23 back pay and reinstatement to the worker's previous position, wages, benefits, hours, and  
3.24 other conditions of employment.

4.1 D. A nursing home worker may individually or as part of a class action bring a  
4.2 civil action against a nursing home employer in district court for violations of the act or of  
4.3 any applicable minimum nursing home employment standards or local minimum nursing  
4.4 home employment standards. The civil action must be filed in the district court of the county  
4.5 where the violation or violations are alleged to have been committed or where the nursing  
4.6 home employer resides, or in any other court of competent jurisdiction.

4.7 E. In an action against nursing home employers for violations of the act, nursing  
4.8 home workers may seek damages and other appropriate relief provided by Minnesota  
4.9 Statutes, section 177.27, subdivision 7, or otherwise provided by law, including reasonable  
4.10 costs, disbursements, witness fees, and attorney fees. A court may also issue an order  
4.11 requiring compliance with the act or with the applicable minimum nursing home employment  
4.12 standards or local minimum nursing home employment standards.

4.13 F. An agreement between a nursing home employer and nursing home worker or  
4.14 labor union that fails to meet the minimum standards and requirements under parts 5200.2000  
4.15 to 5200.2050 and the act is not a defense to an action brought under the act.

4.16 G. A nursing home worker seeking information or assistance may contact the  
4.17 Department of Labor and Industry for further information regarding their rights, protections,  
4.18 and obligations. Contact information for the Department of Labor and Industry must be  
4.19 included in the notice.

4.20 H. Nursing home workers are required to attend trainings regarding their rights  
4.21 and obligations under the act, and the trainings must, at a minimum, cover the following  
4.22 topics:

4.23 (1) applicable compensation and working conditions standards;

4.24 (2) antiretaliation protections in place;

5.1 (3) information on how to enforce the rights and protections under parts  
 5.2 5200.2000 to 5200.2050 and the act and how to report violations, and the remedies available  
 5.3 for violations of those rights, protections, and standards;

5.4 (4) contact information for the Department of Labor and Industry, the board,  
 5.5 and any local enforcement agencies;

5.6 (5) the purposes and functions of the board and information on upcoming  
 5.7 hearings, investigations, or other opportunities for nursing home workers to become involved  
 5.8 in board proceedings;

5.9 (6) other rights, duties, and obligations under the act;

5.10 (7) any updated standards or changes to the information provided since the  
 5.11 most recent training session;

5.12 (8) any other information appropriate to facilitate compliance with the act;  
 5.13 and

5.14 (9) information on labor standards in other applicable local, state, and federal  
 5.15 laws, rules, and ordinances regarding nursing home working conditions or nursing home  
 5.16 worker health and safety.

5.17 I. A nursing home employer must compensate its nursing home workers for training  
 5.18 completed as required by law and reimburse any reasonable travel expenses associated with  
 5.19 attending training sessions not held on the premises of the nursing home.

5.20 J. The nursing home employer shall provide the notices required under this part  
 5.21 in the chosen language of a nursing home worker upon the nursing home worker's request.

5.22 **5200.2030 APPLICATION FOR CERTIFICATION AND RENEWAL.**

5.23 Subpart 1. **Requirements to become a certified worker organization.** To become  
 5.24 a certified worker organization, an applicant must:

6.1 A. meet the definition of worker organization in Minnesota Statutes, section  
6.2 181.211;

6.3 B. submit complete information satisfying the application requirements under  
6.4 subpart 2; and

6.5 C. demonstrate the ability to provide training as follows:

6.6 (1) the training must follow curriculum established by the board and include  
6.7 a synchronous portion for fielding questions from nursing home workers;

6.8 (2) the training, follow-up written materials, and responses to inquiries are  
6.9 in a language in which a nursing home worker is proficient;

6.10 (3) the training records must be provided to the nursing home; and

6.11 (4) the records of workers who attend a training, including when the workers  
6.12 were trained, are retained by the worker organization for five years.

6.13 Subp. 2. **Application.**

6.14 A. To become certified, an applicant must file with the board an application in a  
6.15 format prescribed by the board that includes:

6.16 (1) the applicant's legal business name;

6.17 (2) the applicant's federal employer tax identification number;

6.18 (3) a list of the applicant's board of directors;

6.19 (4) an affirmation that the applicant is exempt from federal income taxation  
6.20 under section 501(c)(3), 501(c)(4), or 501(c)(5) of the Internal Revenue Code;

6.21 (5) an affirmation that the applicant is not dominated or interfered with by  
6.22 any nursing home employer within the meaning of United States Code, title 29, section  
6.23 158a(2);

7.1 (6) an explanation of and evidence demonstrating that the applicant has at  
7.2 least five years of experience engaging with and advocating for nursing home workers;

7.3 (7) an affirmation that data received from a nursing home employer in  
7.4 connection to the training of its nursing home workers will be maintained according to any  
7.5 applicable data security law and used only for the purposes of Minnesota Statutes, section  
7.6 181.214, subdivision 5;

7.7 (8) information demonstrating that the applicant will follow the curriculum  
7.8 established by the board and otherwise satisfy the requirements of Minnesota Statutes,  
7.9 section 181.214, including:

7.10 (a) the training materials the applicant proposes to use;

7.11 (b) the follow-up materials the applicant proposes to send to nursing  
7.12 home workers after trainings, which must include a certificate of completion formatted in  
7.13 a manner prescribed by the board; and

7.14 (c) an affirmation that the applicant will provide training, follow-up  
7.15 written materials, and responses to inquiries in a language in which a nursing home worker  
7.16 is proficient;

7.17 (9) an affirmation that the applicant will update its curriculum as required by  
7.18 the board;

7.19 (10) an affirmation that the applicant will provide nursing homes with  
7.20 applicable training records; and

7.21 (11) an affirmation that the information provided in the application is true.

7.22 B. An applicant may request that the executive director or the executive director's  
7.23 designee examine parts of the application and answer questions related to eligibility.

8.1 Subp. 3. **Renewal application.** Within 30 days of updated standards becoming  
8.2 effective, the board must open a renewal application period. The renewal application period  
8.3 must last 60 days, during which time a certified worker organization must apply for renewal  
8.4 if it wishes to remain certified. The applicant must file with the board a complete renewal  
8.5 application in a format prescribed by the board that includes:

8.6 A. updates to any information previously provided to the board;

8.7 B. an affirmation that the applicant has reviewed any updated standards and  
8.8 curriculum established by the board;

8.9 C. an affirmation that the applicant will educate its trainers on the updated standards  
8.10 and curriculum;

8.11 D. an affirmation that data received from a nursing home employer in connection  
8.12 to the training of its nursing home workers will be maintained according to any applicable  
8.13 data security law and used only for the purposes set forth in Minnesota Statutes, section  
8.14 181.214, subdivision 5; and

8.15 E. an affirmation that all information in the application is true.

8.16 **5200.2040 APPROVAL, DENIAL, REVOCATION, AND CESSATION OF**  
8.17 **CERTIFICATION.**

8.18 Subpart 1. **Decision on a worker organization's application or renewal application.**

8.19 A. Within 90 days of receiving an application for certification or renewal of  
8.20 certification, the board must approve or deny the application.

8.21 B. When an initial application is approved, the board must assign a unique  
8.22 identification number for the certified worker organization, which must be used for any  
8.23 subsequent renewals.

9.1           **Subp. 2. Denial or revocation of certification.**

9.2           A. The board may deny an application for certification or recertification, or revoke  
9.3 certification, if an organization does any of the following:

9.4                   (1) provides false or incomplete information to the board;

9.5                   (2) fails to meet the necessary organizational requirements under the law;

9.6                   (3) fails to provide trainings as required;

9.7                   (4) fails to provide training records to nursing homes; or

9.8                   (5) commits acts that demonstrate incompetence, untrustworthiness, financial  
9.9 irresponsibility, or dishonesty.

9.10           B. The executive director or the executive director's designee may receive  
9.11 complaints regarding alleged violations of this part. The executive director or the executive  
9.12 director's designee shall investigate the validity of the complaint and recommend to the  
9.13 board whether revocation is appropriate.

9.14           C. If an application is denied, the applicant may not submit another application  
9.15 within six months of the denial.

9.16           D. If a certification is revoked, the applicant may not submit another application  
9.17 within one year of the revocation.

9.18           **Subp. 3. Cessation of certification.**

9.19           A. If an organization decides to discontinue providing training to nursing home  
9.20 workers, the organization must notify the board as soon as practicable and in any event  
9.21 within five business days.

9.22           B. Within ten business days of notifying the board under item A, the organization  
9.23 must confirm to the board that:



10.1 (1) all nursing home workers who were trained by the organization received  
10.2 certifications of completion as prescribed by the board and follow-up materials;

10.3 (2) all nursing home workers who were trained by the organization were  
10.4 informed that the organization would no longer be available to respond to inquiries related  
10.5 to nursing home workforce standards;

10.6 (3) all nursing home workers who had upcoming trainings scheduled with  
10.7 the organization were informed of the organization's decision to no longer provide trainings;  
10.8 and

10.9 (4) all nursing home employers have received the proper documentation of  
10.10 worker attendance at trainings.

10.11 **5200.2050 BOARD RESOURCES.**

10.12 A. The board must maintain a current list of certified worker organizations on its  
10.13 public website.

10.14 B. The list must include information about each certified worker organization's  
10.15 ability to provide trainings in various geographic locations, ability to train virtually,  
10.16 availability to train during various work shifts, and contact information for the person  
10.17 responsible for ongoing communication with nursing home employers.

Docket No.– 28-9001-40213

Exhibit H – *Not enclosed*: notice to persons or groups who commented if agency adopts a substantially different rule. This is not enclosed because no changes were made.

Docket No.– 28-9001-40213

**Exhibit I – Proposed Findings and Order  
adopting the rule, incorporating by reference  
a statement of support and rule overview**

**Minnesota Nursing Home Workforce Standards Board  
[PROPOSED] ORDER ADOPTING RULES**

**Adoption of Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements for Nursing Homes, Minnesota Rules, Parts 5200.2000 - 5200.2050.**

WHEREAS:

1. The Minnesota Nursing Home Workforce Standards Board (the “Board”) has complied with all applicable notice and procedural requirements in Minnesota Statutes, chapter 14, Minnesota Rules, chapter 1400, and other applicable law.
2. Minnesota Statutes, section 181.213, subd. 1(a) authorizes the Board to adopt rules establishing minimum employment standards for nursing home workers and Minn. Stat. 181.213, subd. 3(2) authorizes the Board to adopt new employment standards.
3. Minnesota Statutes, section 181.214, subd. 1 authorizes the Board to adopt rules establishing procedures for certifying worker organizations qualified to provide training to nursing home workers.
4. Minnesota Statutes, section 181.215, subd. 2 authorizes the Board to adopt rules establishing requirements for the posting of notices.
5. At a meeting on August 8, 2024, when a quorum was present, the Board authorized proposing the rules. In doing so, the Board authorized Minnesota Department of Labor and Industry staff to submit the Notice of the Board’s Intent to Adopt Permanent Expedited Rules without a Hearing, in the *State Register*.
6. The Board received 56 comments during the comment period. 33 people requested a public hearing. However, because Minnesota Statutes, sections 181.213, subdivision 1(a), 181.213, subd. 3(2), 181.214, subd. 1, and 181.215, subd. 2, authorize the Board to use expediting rulemaking procedures and does not make reference to Minnesota Statutes, section 14.389, subdivision 5, a public hearing is not required.
7. The Board is not making any modifications to the proposed rules as published in the State Register on August 26, 24, 2024.
8. The rules are reasonable and needed to create employment standards, certification of worker organization rules, and notice posting rules for nursing home workers in accordance with the Nursing Home Workforce Standards Board Act.
9. The attached Statement of Support and Rule Overview is hereby incorporated by reference into this Findings and Order.
10. The rules were adopted by the board at its meeting on \_\_\_\_\_, \_\_\_\_\_, a quorum was present, and the undersigned was authorized to sign this order.

IT IS ORDERED that the above-captioned rule is adopted.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jamie Gulley, Chair  
Nursing Home Workforce Standards Board

**STATEMENT OF SUPPORT FOR ADOPTION OF EXPEDITED PERMANENT RULES GOVERNING HOLIDAY PAY, CERTIFICATION OF WORKER ORGANIZATIONS, AND NOTICE POSTING REQUIREMENTS FOR NURSING HOMES, MINN. R. PARTS 5200.2000 – 5200.2050**

**INTRODUCTION AND BACKGROUND.**

In 2023, the Minnesota Legislature enacted the Minnesota Nursing Home Workforce Standards Board Act (“NHWSBA”), establishing the Nursing Home Workforce Standards Board (“Board”). The legislature charged the Board to investigate the working conditions and environment of nursing homes in Minnesota, and to establish rules meant to protect the health, safety, and livelihood of nursing home workers. The Board is comprised of nine members: three members appointed by the governor to represent the interests of nursing home workers; three members appointed by the governor to represent the interests of nursing home employers; the commissioner of labor and industry or a designee; the commissioner of human services or a designee; and the commissioner of health or a designee. While the Board acts independently from other agencies, it is supported Department of Labor and Industry (“DLI”) staff, pursuant to Minn. Stat. § 181.212, subd. 9.

The purpose of this rulemaking is to create employment standards governing holiday pay, criteria for the certification of worker organizations, and requirements for the posting of notices for nursing home workers in accordance with the NHWSBA. Per its enabling statute, the Board has the authority to create minimum employment standards for nursing home workers following the expedited rulemaking procedure. This expedited rulemaking is needed to establish wage standards for nursing home workers pursuant to Minn. Stat. § 181.213, subd. 1(a), establish procedures for certifying worker organizations qualified to provide training to nursing home workers pursuant to Minn. Stat. § 181.214, subd. 1, and establish rules regarding posting requirements pursuant to Minn. Stat. § 181.215, subd. 2. The Board is seeking to adopt rules that will establish mandatory holiday pay for nursing home workers, establish criteria and an application procedure for the certification of nursing home worker organizations, and requirements for the posting of notices related to the rights and obligations of nursing home workers.

**THE BOARD COMPLIED WITH ALL PROCEDURAL REQUIREMENTS AND PROVIDED ADDITIONAL OPPORTUNITIES FOR STAKEHOLDER INPUT.**

**The rule was adopted in compliance with procedural requirements of Chapter 14 and Minn. R. Ch. 1400, as required by Minn. R. 1400.2100(A).**

- The Revisor’s Office certified the form of the proposed rules on August 8, 2024. *See* Minn. Stat. § 14.07, subd. 2. This version is attached as Exhibit A.
- The proposed rules were published in the *State Register* on August 26, 2024. *See* Notice of Intent to Adopt Expedited Rules, attached as Exhibit B1.
- The Board mailed the Notice of Intent to Adopt Expedited Rules without a Hearing (“Notice”) to its agency rulemaking list on August 23, 2024, 33 days before close of the comment period on September 25, 2024. Minn. Stat. § 14.389, subd. 2, and Minn. R. 1400.2085, subp. 2. *See* Certificate of Mailing and Certificate of Accuracy of the Mailing List, attached as Exhibit C1.

- On August 26, 2024, the Notice was also sent to recipients on the Board’s electronic rulemaking list and lists maintained by DLI’s Labor Standards Division. *See* Exhibit C2.
- The Board has submitted all written comments it received during the formal comment period with this filing, attached as Exhibit E.
- The Board will adopt the rules by order upon approval by the Office of Administrative Hearings (“OAH”). Minn. R. 1400.2090.
- The Board will publish notice of adoption in the *State Register* as soon as all required steps are complete.
- The Board did not receive any requests for notice of submission to OAH and therefore has not included a Notice of Submission of the Rules to OAH or a copy of the Certificate of Mailing the Notice of Submission of the Rules, as provided in Minn. R. 1400.2410, subp. 2 (J).

**The rules address the concerns raised in public comments received during the formal comment period.**

During the public comment period, the Board received 56 written comments and 33 requests for hearing in response to the proposed rules. A majority of comments were submitted by nursing home employers and raised concerns about the Board’s efforts to add mandatory holiday pay for nursing home workers. Many of those comments expressed a desire for the Board to act outside of its rulemaking authority, particularly in regard to the mechanisms of funding any employment standard. The Board discussed the comments, and voted to not make any changes to the rules at the October 2 2024, and October 10, 2024 Board meetings. *See* Exhibit K4, 000288, 000291.

**THE RULE DOES NOT REQUIRE A HEARING OR NOTICE OF WITHDRAWAL OF HEARING.**

While the Board received 33 requests for a hearing, a public hearing was not required pursuant to Minn. Stat. § 14.389. To that end, Minn. Stat. §§ 181.213, subd.1 (b), 181.213, subd. 3(2), 181.214, subd. 1, and 181.215, subd. 2, give the Board the authority to use the expedited rulemaking process under section 14.389, generally. The enabling statutes did not make a specific reference to subdivision 5 of that section, so subdivision 5’s requirements related to public hearings are inapplicable. This rulemaking does not require a hearing or notice of withdrawal of hearing. The requirement for notice of withdrawal of a hearing request is therefore inapplicable. *See* Minn. Stat. § 14.25, subd. 2, and Minn. R. 1400.2100, subp. H.

**THE RULE COMPLIES WITH THE ENABLING STATUTE AND OTHER APPLICABLE LAWS.**

In enacting the NHWSBA, the legislature charged the Board with adopting rules that are “reasonably necessary and appropriate to protect the health and welfare of nursing home workers.” Minn. Stat. § 181.213, subd. 1(a). The Board was further charged with creating rules for certification criteria for worker organizations, and for establishing posting requirements. Minn. Stat. §§ 181.214, subd. 1, 181.215, subd 2. The legislature also prescribed what efforts the Board must undertake to determine rules that will protect the health and welfare of nursing home workers.

**Holiday Pay**

The rules related to holiday pay are standards governing compensation. Per statute, the Board is tasked with “adopt[ing] rules establishing minimum nursing home employment standards that are reasonably necessary and appropriate to protect the health and welfare of nursing home workers . . . .”

Minn. Stat. § 181.213, subd. 1(a). “Standards established by the board must include standards on compensation for nursing home workers . . .” *Id.*

The Board must adopt rules establishing initial standards for wages for nursing home workers by November 1, 2024. Minn. Stat. § 181.213, subd. 1(b). The Board is on track to do so, as the initial wage standards were approved by Administrative Law Judge James R. Mortenson on September 20, 2024. Exhibit K1, 000254. Those initial wage standards will not become effective until January 1, 2026, at the earliest, because an appropriation is needed to cover the additional costs. *See* Minn. Stat. § 181.213, subd. 2(c)-(d). Regardless of those pending initial standards, the Board has wide authority to modify, adopt, or repeal employment standards. At *least* once every two years, the Board must:

- (1) conduct a full review of the adequacy of the minimum nursing home employment standards previously established by the board; and
- (2) following that review, adopt new rules, amend or repeal existing rules, or make recommendations to adopt new rules or amend or repeal existing rules for minimum nursing home employment standards using the expedited rulemaking process in section 14.389, as appropriate to meet the purposes of sections 181.211 to 181.217.

Minn. Stat. § 181.213, subd. 3. The Legislature gave the Board expedited rulemaking authority for updating the standards, as it did for making the initial standards. *See id.*; Minn. Stat. § 181.213, subd. 1(b).

The Board deemed these holiday wage standards to be reasonably necessary and appropriate to protect the welfare of nursing home workers—to such an extent that the Board separated these holiday pay standards from the initial wage standards to allow them to become effective January 1, 2025. To that end, these holiday pay standards will not require any additional appropriation to become effective under the statute. Minn. Stat. § 181.213, subd. 2(c)-(d); Exhibit K4, 000283. And the holiday pay standards are undoubtedly important to the Board and community stakeholders, given that holiday pay was the third highest survey response from nursing home workers about issues that are important to them. Exhibit K5, 000337. Those surveys were conducted as part of the Board’s thorough investigation required by Minn. Stat. § 181.213, subdivision 2(a)-(b). The Board also collected data on holiday pay in nursing homes through a review of Collective Bargaining Agreements (“CBA”), as part of its market investigations conducted under Minn. Stat. 181.213, subd. 2(b). The Board reviewed 36 CBAs listed under “Long Term Care - Nursing Homes & Greater MN Hospitals” at Worksites ([seiuhealthcaremn.org](http://seiuhealthcaremn.org)). Those CBAs an average of 6.2 and a median of six recognized holidays per year, excluding any holiday not listed in the rules. No CBA included all eleven holidays listed in the rules. Exhibit K3, 000280. The rules will have a positive impact on the welfare of nursing home workers who work under those CBAs, as well as all nursing home workers who do not currently receive holiday pay for the eleven holidays mandated by the rules.

Notably, the Board did not “conduct a full review of the adequacy of the minimum nursing home employment standards previously established by the board” as prescribed by section 181.213, subdivision 3. That provision is not precisely applicable to the holiday pay rules, given that the initial wage standards are not yet effective. But the Board nevertheless used its collective professional judgment to understand that the holiday pay rules, in addition to the initial wage standards, would suitably protect the welfare of nursing home workers in terms of their compensation. Exhibit K4, 000286.

## **Notice of Nursing Home Worker Rights**

The NHWSBA requires nursing home employers to provide notices “informing nursing home workers of the rights and obligations provided under [the NHWSBA] 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.” The Board was tasked with developing rules for posting notices of the rights and obligations of nursing home workers under the NHWSBA. Minn. Stat. 181.215, subd. 2. The rules must specify “the minimum content and posting requirements for the notices required [by the NHWSBA]” Minn. Stat. § 181.215, subd. 2.

Because statute is explicit that the notices required by Minn. Stat. § 181.215, subd. 1 must contain information on the rights and obligations provided by the NHWSBA, and the rules are required to specify the minimum content requirements of the notices, the proposed rules outline each right and obligation that is provided to nursing home workers under the NHWSB. This includes the protections against retaliations provided under Minn. Stat. § 181.216, a nursing home worker’s private right of action under Minn. Stat. § 181.217, and the obligation for nursing home workers to attend trainings on their rights under the NHWSBA as well as the content that must be covered in such a training, pursuant to Minn. Stat. § 181.214. *See* 5200.2020, subp. 2. While language of the rules occasionally mirrors the language found in parts of the NHWSBA, this is a result of the particular requirements of Minn. Stat. § 181.215, subd. 2. Pursuant to statute, the Board’s rules must specify the content that must be included in the notices, which are the rights and obligations set forth by the NHWSBA, and some of those rights and obligations are explicitly stated in statute.

Minn. Stat. § 181.215, subd. 1 also prescribes the minimum requirements for the posting of rules. Therefore, the rules require that notices must be provided in the same means that a nursing home employer uses to provide other work-related notices. At a minimum, the provision of notices be as conspicuous as posting a copy of the notice at each work site where the notice can be readily seen and reviewed by all nursing home workers, or providing a paper or electronic copy to all nursing home workers, which are the minimum requirements described in Minn. Stat. § 181.215, subd. 1, and required as a part of the rules pursuant to Minn. Stat. § 181.215, subd. 2. *See*, 5200.2020, subp.1.

### **Worker Organization Certification**

Pursuant to Minn. Stat. § 181.214, subd. 1, the Board was tasked with certifying worker organizations “that it finds are qualified to provide training to nursing home workers” on the rights of nursing home workers under the NHWSBA and other applicable laws. The legislature, in granting the Board the authority to enact rules regarding the certification of worker organizations, dictated that the rules must ensure that a worker organization is able to provide “(1) effective, interacting training on the information required by [Minn. Stat. § 181.214]; and (2) follow-up written materials and responses to inquiries from nursing home workers in the languages in which nursing home workers are proficient.” Minn. Stat. § 181.214, subd. 1

The minimum duties of a certified worker organization, which are outlined in Minn. Stat. § 181.214, subd. 5. Those duties indicate that a certified worker organization:

- (1) must use a curriculum for its training sessions that meets requirements established by the board;
- (2) must provide trainings that are interactive and conducted in the languages in which the attending nursing home workers are proficient;
- (3) must, at the end of each training session, provide attending nursing home workers with follow-up written or electronic materials on the topics covered in the training session, in order to fully inform nursing home workers of their rights and opportunities under sections 181.211 to 181.217;
- (4) must make



itself reasonably available to respond to inquiries from nursing home workers during and after training sessions; and (5) may conduct surveys of nursing home workers who attend a training session to assess the effectiveness of the training session and industry compliance with sections 181.211 to 181.217 and other applicable laws, rules, and ordinances governing nursing home working conditions or worker health and safety.

Minn. Stat. § 181.214, subd. 5.

To comply with the requirements of Minn. Stat. § 181.214, subd. 1 and ensure compliance among worker organizations, the Board's rules require that all prospective worker organizations demonstrate: the ability to follow a training curriculum approved by the Board; that trainings will include an interactive element to allow nursing home workers to ask questions during the training; the ability to provide trainings in the languages the nursing home workers being trained are proficient in; the ability to provide training records to nursing home employers, and; the ability to retain records of workers trained as part of their application for certification. *See* 5200.2030, subp. 1. Making this information a part of a worker organization's application for certification allows the Board to easily identify organizations that can provide effective and interactive trainings in the languages necessary. To further ensure that certified worker organizations have the ongoing ability to provide training on the curriculum developed by the board, Minn. Stat. 181.214, subd. 1 requires the Board to develop rules providing a process for renewal of certification. To achieve this, the Board has developed rules that will require all worker organizations to apply for a renewal of their certification anytime the Board updates its standards pursuant to Minn. Stat. § 181.213, subd. 3. *See* 5200.2030, subp. 3.

Following the submission of a worker organization's application for certification or renewal of certification, the Board will issue its decision within ninety days. The proposed rules outline the criteria for which an application may be denied, which include failure to meet necessary organizational requirements; failure to provide trainings or training records; providing false information to the Board, or; committing acts that demonstrate incompetence, untrustworthiness, financial irresponsibility, or dishonesty. 5200.2040, subp. 2. The Board will also have the ability to receive and investigate complaints and may revoke the certification of a worker organization on the same grounds that it may deny an application for certification. These rules will also help the Board ensure the requirements of Minn. Stat. § 181.214, subd. 1 are being met on an ongoing basis.

The rules also contemplate the voluntary cessation of a certification, to ensure that nursing home workers continue to receive appropriate training. Upon a certified worker organization's decision to discontinue providing training and surrender its certification, a worker organization must notify the Board; confirm that it has provided all required follow-up materials for any trainings it has conducted; provide notice to nursing home workers that it has trained or was scheduled to train that it will no longer be providing trainings or additional support, and; affirm that all nursing home employers have received proper documentation of nursing home worker attendance at trainings. 5200.2040, subp. 3.

### **THE RULES ARE CONSTITUTIONAL AND LEGALLY VALID.**

The proposed rules are constitutional and legally valid. Statutes are presumed to be constitutional. *In re Haggerty*, 448 N.W. 2d 363, 365 (Minn. 1989). The rules comply with the enabling statutes in Minn. Stat. §§ 181.213, subd. 1(b), 181.213, subd. 3(2), 181.214, sub. 1, 181.215, subd. 2, and other applicable laws.

One public comment received questioned the constitutionality of these rules, on the grounds that the rules regarding holiday pay would impair the obligation of contracts, which is prohibited by both the

United States and Minnesota Constitutions. The purpose of the Contracts Clause is to “encourage trade and credit by promoting confidence in the stability of contractual obligations.” *U.S. Trust Co. v. New Jersey*, 431 U.S. 1, 15 (1977) (internal citation omitted). However, a state still has “authority to safeguard the vital interests of its people.” *Id.* Furthermore, the Contracts Clause does not deprive States of their “broad power to adopt general regulatory measures without being concerned that private contracts will be impaired, or even destroyed, as a result.” *Id.* at 22. Here, the legislature instructed the Board to “adopt rules establishing minimum nursing home employment standards that are reasonably necessary and appropriate to protect the health and welfare of nursing home workers.” Minn. Stat. § 181.213, subd. 1(a). Ensuring that the nursing home workers of Minnesota receive appropriate compensation is clearly within the State’s right to protect its citizenry, and well within the State’s ability to adopt broad regulations. *See Minnesota Living Assistance, Inc. v. Peterson*, 899 F.3d 548, 554 (8th Cir. 2018) (finding that Minnesota has an “important interest in the application of its wage and hour laws”). Furthermore, increases in wages are shown to increase worker retention and productivity.<sup>1</sup> An increase in productivity and worker retention will likely improve patient care, protecting yet another group of Minnesota’s citizens.

Moreover, not every modification of a contractual promise impairs the obligation of contract under federal law. A finding that there has been a technical impairment of a contract is merely a “preliminary step in resolving the more difficult question [of] whether that impairment is permitted under the Constitution.” *Id.* at 21. Setting broad employment regulations falls within the State’s obligation and inherent power to protect the welfare of its people. The Board does not agree that the rules constitute a technical impairment of a contract. However, the rules would still be valid even if there were an impairment because the State’s power to protect public welfare “may be validly exercised under the Contracts Clause *even if* it impairs a contractual obligation so long as it does not destroy it.” *Id.* at 26 (emphasis added). There is no destruction of a contractual obligation in this case—employees and employers are both still required to fulfill their respective responsibilities in an employment contract.

The same public comment also questioned the constitutionality of the rules on the grounds that they violate the Establishment Clause of the United States Constitution. The Establishment Clause prohibits the federal government—and through the Due Process Clause of the Fourteenth Amendment, state governments—from establishing a law that favors or disfavors any religion in particular. U.S. CONST. amend. I. The comment argued that the inclusion of Christmas in the list of holidays in the Proposed Rules unconstitutionally favors Christianity over other religions. However, the United States Supreme Court has indicated that the Establishment Clause must be interpreted via “reference to historical practices and understandings.” *Kennedy v. Bremerton School District*, 597 U.S. 507, 535 (2022). Whether a piece of legislation “actually conveys a message of endorsement of religion” is not merely a question of fact; the relevant question is “whether an objective observer, acquainted with the text, legislative history, and implementation of the [legislation], would perceive it as state endorsement” of religion. *Wallace v. Jaffree*, 472 U.S. 38, 76 (1985) (O’Connor, J., concurring). The first public holidays were codified by the federal government in 1894 and included Christmas Day. *See* 5 U.S.C. § 6103. Christmas has been included in the list of legal holidays for over 130 years. The State of Minnesota recognizes Christmas as a state holiday. Minn. Stat. § 645.44, subd. 5(a). Legislative history and context indicate that the inclusion of

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<sup>1</sup> Natalia Emanuel, *The Fruits of Our Labor: Essays on Work and Its Impacts* (July 12, 2021) (Ph.D. dissertation, Harvard University) (This piece is currently being expanded upon as a working paper in collaboration with Emma Harrington. The most updated version can be found at <https://drive.google.com/file/d/1IMwvmZLIJomiFIWgqKbCNrCXTZ-q-3ZV/view>).

Christmas as a holiday for the purposes of mandatory holiday pay does not violate the Establishment Clause.

That comment also argued that these Proposed Rules are preempted by the National Labor Relations Act (“NLRA”) pursuant to the Supremacy Clause of the United States Constitution. U.S. CONST. art. 4 cl. 2 § 1. While the NLRA does not contain an explicit preemption clause, courts generally recognize two forms of preemption developed through caselaw: *Garmon* preemption and *Machinists* preemption. The comment argues that the Proposed Rules are preempted under both of these standards, but that argument misrepresents the holdings of those cases. Neither form of preemption applies here.

As an initial matter, determining the dates of holidays and the minimum rate of pay that an employee receives for working on those holidays is not protected or forbidden by the NLRA. The United States Supreme Court has set clear lines categorizing activities that states may partake in with regard to labor standards. States “possess broad authority under their police powers to regulate employment relationships to protect workers” including through “minimum and other wage laws, [and] laws affecting occupational health and safety.” *Metropolitan Life Ins. Co.* at 756. The Court has affirmed that “the establishment of labor standards falls within the traditional police power of the State.” *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 21 (1987). As such, a law that simply “establishes a minimum labor standard that does not interfere with collective bargaining” is not preempted. *520 S. Mich. Ave. Assocs., Ltd. v. Shannon*, 549 F.3d 1119, 1129 (7th Cir. 2008). In *Fort Halifax* and *Metropolitan Life Insurance*, the Supreme Court held that a minimum labor standard is a law that: “(1) affects union and nonunion employees equally; and (2) neither encourages nor discourages collective bargaining.” *Building Owners and Managers Association of Chicago v. City of Chicago*, 513 F. Supp.3d 1017, 1023 (N.D. Ill., Eastern Division, 2021).

*Garmon* preemption protects activities covered by section 7 of the NLRA and ensures that the safeguards against unfair labor practices provided by section 8 of the Act remain intact. *Bldg. & Const. Trades Council of Metro. Dist. v. Associated Builders & Contractors of Massachusetts/Rhode Island, Inc.*, 507 U.S. 218, 225-226 (1993). Section 7 of the NLRA guarantees employees “the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection,” as well as the right “to refrain from any or all such activities.” 29 U.S.C. § 157. Section 8 of the Act makes it an unfair labor practice for an employer “to interfere with, restrain, or coerce employees in the exercise of rights guaranteed in Section 7” of the Act. 29 U.S.C. § 158. Courts do not find preemption under the *Garmon* standard when: (1) the activity regulated was a “merely peripheral concern” of the NLRA, or (2) the regulated conduct touches interests “so deeply rooted in local feeling and responsibility” that without compelling direction, a court cannot infer that Congress had deprived states of the power to act. *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 243-44 (1959).

*Garmon* preemption is not applicable to these rules. Indeed, the rules apply to all covered workers, regardless of whether they are union or nonunion workers, and the rules do nothing to encourage or discourage collective bargaining. All nursing home workers, as defined by the NHWSBA, would receive a minimum of eleven paid holidays compensated at time-and-a-half rates. While the rules set a floor for the number of paid holidays that must be provided, there is nothing in the rules forbidding employers or union representatives for negotiating more holidays than the floor provides. And the rules do nothing that would require or encourage an employer to interfere with, restrain, or coerce employees in the exercise of their collective bargaining rights.

*Machinists* preemption is a recognition of Congress' desire to balance the power between employers and workers. *Lodge 76, Int'l Ass'n of Machinists & Aerospace Workers, AFL-CIO v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132, 146, 96 S. Ct., 2548, 2556 (1976). It therefore prohibits states from imposing additional restrictions on economic weapons of self-help, such as strikes or lockouts, unless such restrictions were presumably contemplated by Congress. *Id.*, at 147. The NLRA does not govern the specific elements of a collective bargaining agreement; those items are left to the employee and employer to negotiate. Similarly, the NLRA does not interfere with a state's police power to set minimum labor standards. *Metro. Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 756 (1985).

*Machinists* preemption is not applicable to these rules. To that end, the rules do not restrict the economic tools employees and employers may use as part of collective bargaining. These rules set a minimum labor standard that does not interfere with collective bargaining, which is within the state's authority to establish.

The comment also argues that bargaining freedom under the NLRA means that parties are "free from having contract provisions imposed upon them against their will." *United Steelworkers*, 871 F. Supp. 335, 341 (D. Minn. 1994). However, the comment misconstrues the ruling in the cited case. In *United Steelworkers*, the issue was whether an Illinois law requiring new purchasers of a company to adhere to preexisting collective bargaining agreements was preempted by the NLRA. The Board does not seek to hold anyone accountable for a contract they did not enter in to. Instead, the Board means to use the state's police power to establish a minimum labor standard, pursuant to statute. The comment similarly argues that any state laws that influence "either the economic weapons available to the bargaining parties or the outcome of the negotiations" are preempted. See *Thunderbird Mining Co. v. Ventura*, 138 F. Supp. 2d 1193, 1196 (D. Minn. 2001). These rules do not influence the outcome of negotiations between parties in a way that federal law disallows. As indicated above, setting minimum standards for workers is well within the purview of a state government. By creating a floor, the Proposed Rules do not influence the outcome of the negotiations in a way that goes against court findings in *Thunderbird*.

### **THE RULE DOES NOT DELEGATE AUTHORITY TO AN OUTSIDE AGENCY, PERSON, OR GROUP.**

All rulemaking authority under the rule is exclusive to the Board. The enabling statute called for the Board to consult with DHS in adopting the rules on compensation standards. DHS was involved throughout the investigation of market conditions as well as the determination of fiscal impact of the holiday pay rules, which preceded the drafting and adoption of rules. However, the drafting and approval of the rules was done solely by the Board.

Pursuant to Minn. Stat. § 181.212, subd. 1(a)(1), a designee of DHS was appointed to the Board, and voted in favor of adopting the rules as drafted at the May 9, 2024, meeting. Upon receiving minor, non-substantive edits to the rules from the Minnesota Office of the Revisor of Statutes, the Board reviewed and voted to approve of the edits, prior to their publication in the State Register on August 26, 2024.

### **THE RULES ARE CONSISTENT WITH THE DEFINITION OF "RULE."**

The rules are a statement of general applicability and future effect, to be adopted to implement the specific requirements of Minn. Stat. §§ 181.213, subd.1(b), 181.213, subd. 3(2), 181.214, sub. 1, and 181.215, subd. 2. They will therefore have the force and effect of law. Minn. Stat. § 14.02, subd. 4, and Minn. R. 1400.2100, subp. G.

**CONCLUSION.**

The Board has established that it has complied with the procedural requirements applicable to the expedited rulemaking process. The Board has acted within its authority pursuant to Minn. Stat. §§ 181.213, 181.214, and 181.215 in proposing the rules establishing holiday pay for nursing home workers, criteria for the certification of worker organizations, and requirements for the posting of notices of rights under the NHWSBA. Therefore, the Board respectfully requests that the rules be approved.

## **RULE OVERVIEW PARTS 5200.2000 – 5200.2050**

### **Part 5200.2000, Definitions**

#### **Part 5200.2000, subpart 1; Scope**

This subpart establishes the scope of the rules and the applicability of terms defined under either this rule or the NHWSBA.

#### **Part 5200.2000, subpart 2; Applicant**

This subpart defines the term “applicant” as a worker organization that applies to become a certified worker organization or renew its certification.

#### **Part 5200.2000, subpart 3; Executive director**

This subpart defines the term “executive director” as the executive director of the Minnesota Nursing Home Workforce Standards Board

#### **Part 5200.2000, subpart 4; Holiday**

This subpart defines what days constitute a “holiday” pursuant to this section and provides dates of those holidays. It states that a holiday is a 24-hour period from midnight of the designated holiday to midnight the next day.

#### **Part 5200.2000, subpart 5; Minnesota Nursing Home Workforce Standards Board Act**

This subpart defines the MNHWSBA or “act” as Minnesota Statutes, sections 181.211 to 181.217.

### **Part 5200.2010, Holiday Pay**

#### **Part 5200.2010, subpart 1; Holiday pay**

This subpart establishes the statewide holiday pay requirements at a minimum of time-and-one-half the employee’s hourly wage.

#### **Part 5200.2010, subpart 2; Modification of holiday date and time**

This subpart establishes the situations in and methods by which a nursing home employer may modify the holiday schedule laid out in 5200.2000, subpart 4.

### **Part 5200.2020, Notice of nursing home worker rights**

#### **Part 5200.2020, subpart 1; Posting of nursing home worker rights**

This subpart establishes that employers are required to provide notice of workers’ rights to nursing home employees, and how employers must provide that notice.

#### **Part 5200.2020, subpart 2; Contents of notice**

This subpart lays out what the required notice in 5200.2020, subp. 1 must contain.

### **Part 5200.2030, Application for certification and renewal**

#### **Part 5200.2030, subpart 1; Requirements to become a certified worker organization**

This subpart establishes the requirements that an applicant must fulfill in order to become a certified worker organization as defined by Minnesota Statutes section 181.211.

#### **Part 5200.2030, subpart 2; Application**

This subpart establishes that an applicant must file an application to the board in order to become certified. The subpart further establishes what information the form must contain.

#### **Part 5200.2030, subpart 3; Renewal application**

This subpart requires that within 30 days of updated standards becoming effective, the board must open a renewal application period that is to last 60 days. During the renewal period, all certified worker organizations must apply for renewal if they wish to remain certified. This subpart additionally provides guidance on what information the renewal application form must contain.

### **Part 5200.2040, Approval, denial, revocation, and cessation of certification**

#### **Part 5200.2040, subpart 1; Decision on a worker organization's application or renewal application**

This subpart dictates that the board must approve or deny an application within 90 days of receiving it. If approved, the certified worker organization is to be assigned an identification number.

#### **Part 5200.2040, subpart 2; Denial or revocation of certification**

This subpart outlines the situations in which the board may deny an application. It also outlines the effect of a denial or revocation of certification for the worker organization. Additionally, the board may receive complaints regarding violations of this subpart, and must investigate them appropriately.

#### **Part 5200.2040, subpart 3; Cessation of certification**

This subpart outlines the process by which an organization must inform the board if they choose to discontinue training services, and what information and confirmations the organization must provide to the board in the event of a cessation of providing trainings.

### **Part 5200.2050, Board resources**

This subpart outlines what information the board must maintain regarding certified worker organizations on its public website.

Docket No.– 28-9001-40213

Exhibit J – *Not enclosed*: notice of submission or rule to OAH. This is not enclosed because there were no requests for notice of submission.



Docket No.— 28-9001-40213

Exhibit K1—Order Approving the  
Adoption of Expedited  
Permanent Rules Governing Initial  
Wage  
Standards for Nursing Home Workers;  
Minnesota Rules, Part 5200.2060,  
from the Office of Administrative  
Hearings

OAH 5-9001-40100  
Revisor's ID No. R-4847

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE NURSING HOME WORKFORCE STANDARDS BOARD

In the Matter of the Adoption of Expedited  
Permanent Rules Governing Initial Wage  
Standards for Nursing Home Workers;  
Minnesota Rules, Part 5200.2060

**ORDER ON REVIEW  
OF RULES UNDER  
MINN. STAT. § 14.389  
AND MINN. R. 1400.2410**

On September 16, 2024, the Nursing Home Workforce Standards Board (Board) filed documents with the Office of Administrative Hearings seeking review and approval of the above-entitled rules under Minn. Stat. § 14.389 (2024) and Minn. R. 1400.2410 (2023).

Based upon a review of the written submissions by the Board, the contents of the rulemaking record, Minn. Stat. § 1400.2100 (2023), and other applicable laws,

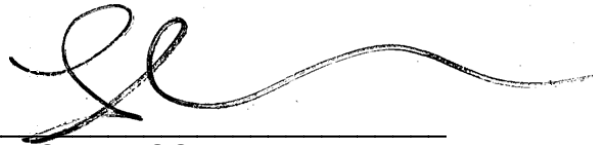
**IT IS HEREBY DETERMINED THAT:**

1. The rules were adopted in compliance with the procedural requirements of Minn. R. ch. 1400 (2023), Minn. Stat. ch. 14, and Minn. Stat. § 181.213, subds. 1(a), (b), and 2.
2. The rules are the same as the rules the Board proposed.
3. The rules comply with Minn. Stat. § 181.213, subds. 1(a), (b), and 2.
4. The rules are not unconstitutional or illegal.
5. The rules are not a delegation of the Board's powers.
6. The rules meet the definition of "rule" under Minn. Stat. § 14.02, subd. 4, and will have the force and effect of law when implemented.
7. The rules are not subject to Minn. Stat. § 14.25, but rather Minn. Stat. § 14.389 generally.

**THEREFOR, IT IS HEREBY ORDERED THAT:**

The proposed rules are **APPROVED** as to their legality and their form to the extent the form relates to legality.

Dated: September 20, 2024

A handwritten signature in black ink, appearing to read 'Jm', with a long, wavy horizontal line extending to the right.

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JIM MORTENSON  
Administrative Law Judge

Docket No.— 28-9001-40213

Exhibit K2—Statement of Support for  
Adoption of Expedited Permanent  
Rules  
Governing Minimum Employment  
Standards for Nursing Homes,  
Minnesota Rules, Part 5200.2060 –  
5200.2090

**STATEMENT OF SUPPORT FOR ADOPTION OF EXPEDITED PERMANENT RULES  
GOVERNING MINIMUM EMPLOYMENT STANDARDS FOR NURSING HOMES, MINN. R.  
PARTS 5200.2060 – 5200.2090**

**INTRODUCTION AND BACKGROUND**

In 2023, the Minnesota Legislature enacted the Minnesota Nursing Home Workforce Standards Board Act (“NHWSBA”), establishing the Nursing Home Workforce Standards Board (“Board”). The legislature charged the Board to investigate the working conditions and environment of nursing homes in Minnesota, and to establish rules meant to protect the health, safety, and livelihood of nursing home workers. The Board is comprised of nine members: three members appointed by the governor to represent the interests of nursing home workers; three members appointed by the governor to represent the interests of nursing home employers; the commissioner of labor and industry or a designee; the commissioner of human services or a designee; and the commissioner of health or a designee. While the Board acts independently from other agencies, it is supported Department of Labor and Industry (“DLI”) staff, pursuant to Minn. Stat. § 181.212, subd. 9.

The purpose of this rulemaking is to create minimum employment standards for nursing home workers in accordance with the NHWSBA. Per its enabling statute, the Board has the authority to create minimum employment standards for nursing home workers following the expedited rulemaking procedure. This expedited rulemaking is needed to establish initial wage standards for nursing home workers pursuant to Minn. Stat. § 181.213, subd. 1(a). The Board is seeking to adopt rules that will establish four sets of minimum wages for nursing home workers: one for certified nursing assistants; one for licensed practical nurses; one for trained medication aides; and one that is generally applicable to all other nursing home workers.

**THE BOARD COMPLIED WITH ALL PROCEDURAL REQUIREMENTS AND PROVIDED ADDITIONAL OPPORTUNITIES FOR STAKEHOLDER INPUT**

**The rule was adopted in compliance with procedural requirements of Chapter 14 and Minn. R. Ch. 1400, as required by Minn. R. 1400.2100(A).**

- The Revisor’s Office certified the form of the proposed rules on June 26, 2024. *See* Minn. Stat. § 14.07, subd. 2. This version is attached as Exhibit A.
- The proposed rules were published in the *State Register* on June 24, 2024. *See* Notice of Intent to Adopt Expedited Rules, attached as Exhibit B1.
- The Board mailed the Notice of Intent to Adopt Expedited Rules without a Hearing (“Notice”) to its agency rulemaking list on June 21, 2024, 33 days before close of the comment period on July 24, 2024. Minn. Stat. § 14.389, subd. 2, and Minn. R. 1400.2085, subp. 2. *See* Certificate of Mailing and Certificate of Accuracy of the Mailing List, attached as Exhibit C1.
- On June 24, 2024, the Notice was also sent to recipients on the Board’s electronic rulemaking list and lists maintained by DLI’s Labor Standards Division. *See* Exhibit C2.
- The Board has submitted all written comments it received during the formal comment period with this filing, attached as Exhibit E.

- The Board will adopt the rules by order upon approval by the Office of Administrative Hearings (“OAH”). Minn. R. 1400.2090.
- The Board will publish notice of adoption in the *State Register* as soon as all required steps are complete.
- The Board did not receive any requests for notice of submission to OAH and therefore has not included a Notice of Submission of the Rules to OAH or a copy of the Certificate of Mailing the Notice of Submission of the Rules, as provided in Minn. R. 1400.2410, subp. 2 (J).

**The rules address the concerns raised in public comments received during the formal comment period.**

During the public comment period, the Board received 267 written comments and 69 requests for hearing in response to the proposed rules. Many comments offered general support for the proposed rules. Some comments stated concern about the Board’s efforts to adopt minimum wage standards. Many of those comments expressed a desire for the Board to act outside of its rulemaking authority, particularly in regard to the idea of funding new minimum wages.

**THE RULE DOES NOT REQUIRE A HEARING OR NOTICE OF WITHDRAWAL OF HEARING.**

While the Board received 69 requests for a hearing, a public hearing was not required pursuant to Minn. Stat. § 14.389. To that end, Minn. Stat. § 181.213, subdivision 1(b), gives the Board the authority to use the expedited rulemaking process under section 14.389, generally. The enabling statute did not make a specific reference to subdivision 5 of that section, so subdivision 5’s requirements related to public hearings are inapplicable. This rulemaking does not require a hearing or notice of withdrawal of hearing. The requirement for notice of withdrawal of a hearing request is therefore inapplicable. *See* Minn. Stat. § 14.25, subd. 2, and Minn. R. 1400.2100, subp. H.

**THE RULE COMPLIES WITH THE ENABLING STATUTE AND OTHER APPLICABLE LAWS.**

In enacting the NHWSBA, the legislature charged the Board with adopting rules that are “reasonably necessary and appropriate to protect the health and welfare of nursing home workers.” Minn. Stat. § 181.213, subd. 1(a). The legislature also prescribed what efforts the Board must undertake to determine rules that will protect the health and welfare of nursing home workers.

**Market Investigations.**

The Board was charged with investigating “market conditions and the existing wages, benefits, and working conditions of nursing home workers for specific geographic areas of the state and specific nursing home occupations.” Minn. Stat. § 181.213, subd. 2(a). In its investigations, the Board was specifically required to examine:

- (1) 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;
- (2) statements showing wage rates and benefits paid to nursing home workers in the relevant geographic area and nursing home occupations;

- (3) signed collective bargaining agreements applicable to nursing home workers in the relevant geographic area and nursing home occupations;
- (4) testimony and information from current and former nursing home workers, worker organizations, nursing home employers, and employer organizations;
- (5) local minimum nursing home employment standards;

Minn. Stat. § 181.213, subd. 2(b).

Based upon its investigation, the Board needed to “seek to adopt minimum nursing home employment standards that meet or exceeds existing industry conditions for a majority of nursing home workers in the relevant geographic area and nursing home occupation.” Minn. Stat. § 181.213, subd. 2(a). The Board collected or received data from a variety of sources to meet this statutory requirement. To obtain testimony from current and former nursing home workers, worker organizations, nursing home employers, and employer organizations, the Board conducted a series of five public hearings during which testimony was sought from the public. The Board also published and promoted online public surveys for members of the public, nursing home workers, and nursing home employers seeking, which received over one hundred responses. Further, the Board collected and examined collective bargaining agreements applicable to nursing home workers.

To create a standard that meets or exceeds the existing industry conditions for a majority of nursing home workers, the Board first determined the number of workers that fall under the NHWSBA, and then determined the number of workers for whom a proposed standard would meet or exceed their current wage rate.

To determine the number of workers effected by the NHWSBA, the Board utilized data provided by the Department of Human Services (“DHS”) “Employee Counts” workbook, which draws on data provided by DHS from cost reports for the year 2022. The “Employee Counts” workbook found a total of 26,006 people employed in either full- or part-time capacities in the nursing home industry whose wages could be affected by the NHWSBA. See Exhibit K1.

To gather wage information about nursing home workers, both by occupation and by geographic location, the Board utilized data collected as part of a DHS survey of 132 nursing home facilities and 5,994 nursing home workers throughout Minnesota as a part of the workforce incentive grant program. Exhibit K1, at page 1. This data presented actual wage per hour data on nursing home workers who make less than \$30 per hour. The data collected by this survey was anonymized, but noted the Economic Development Region, Rule 50 group of the facility and the wages paid to five specific occupations: Certified Nursing Assistant, Dietary Aide, Cook, Housekeeping, and Activity Aide. Given the size of the data collected in this survey, the Board determined that the wages presented in the survey were sufficiently as representative of the industry.

After gathering data about effected employee populations and wage ranges for certain occupations and geographic regions, the Board then used that data to determine if a proposed minimum wage standard would meet or exceed the existing industry conditions for a majority of nursing home workers within a given geographic region and occupation. To do this, the Board compared a proposed minimum wage to the current wage data within a given occupation and geographic region. Based on the data collected by the Board, it was found that 76% of CNAs working in a nursing home make less than \$22.50 per hour,

44% of cooks, 88% of dietary aides, 83% of housekeepers, and 72% of activity aides working in a nursing home make less than 19.00 per hour.

The five occupations identified in the DHS Workforce Incentive Grant Program Survey represent approximately 63% of the nursing home workforce, according to the “Employee Counts” workbook. Exhibit K1, at page 3. By multiplying the percentage of workers in a given occupation making below the proposed minimum wage by the percentage of the workforce that a given occupation comprises, the Board was able to determine the percentage of the total workforce—within that occupation—that is making below the proposed minimum wage. With this calculation, using only the five occupations identified by the DHS Workforce Incentive Grant Program Survey, the proposed minimum wages would meet or exceed the market conditions for at least 48% of the nursing home workforce (25.84% from CNAs, 2.2% from cooks, 11.44% from dietary aides, 4.98% from housekeeping, and 3.6% from activity aides).

The Board, using its professional expertise, also made reasonable estimates based upon the wage data provided. See Exhibit K3, at page 8. Using their expertise and experience in administering nursing homes, the Board determined that laundry workers have approximately the same wage range and frequencies as people working in housekeeping, which meant that approximately 83% of laundry workers make less than \$19.00 per hour, and because laundry workers make up 2% of the nursing home workforce, the proposed minimum wage standards would meet or exceed the existing market conditions of an additional 1.7% of the nursing home workforce. It was also determined that TMAs generally make one dollar more per hour than CNAs, which allowed the Board to conclude that 64% of TMAs make less than the proposed minimum wage of \$23.50 per hour, and because TMAs make up 4% of the nursing home workforce, the proposed standards would meet or exceed the market conditions for an additional 3%.

Based upon the data the Board collected in its investigation of the market conditions of the nursing home industry, the proposed minimum wage rules would meet or exceed the existing market conditions of 52.7% of the nursing home workers.

The rules would set a statewide minimum wage for all nursing home workers, and three occupation-specific minimum wages for nursing home workers. While the language of Minn. Stat. § 181.213, subd. 2 makes reference to investigating the market conditions of “relevant geographic area[s],” Minn. Stat. § 181.213, subd 1(a) provides that the Board “must establish statewide standards, and may adopt standards that apply to specific nursing home occupations.” The Board ultimately determined that the “relevant geographic area” to consider was the state as a whole. By pursuing statewide analysis of data, the Board was able to equally apply all data it collected as part of its market investigation. A statewide analysis of data also aligned with testimony that the Board received from the public hearings it conducted, as members of the public provided feedback that general economic environments for nursing home workers in traditionally rural areas are comparable to the general environments for nursing home workers in urban areas.

## **Operating Rate and Fiscal Determinations**

Per statute, the Board needed to analyze the fiscal impact of a proposed minimum wage standard. Minn. Stat. § 181.213, subd. 2(c). As part of its investigations, the Board explored “the impact of [wage and benefit increases on] nursing home operating payment rates determined pursuant to section 256R.21, subdivision 3, and the employee benefits portion of the external fixed costs payment rate determined pursuant to section 256R.25.” Minn. Stat. § 181.213, subd. 2(c). The Board fulfilled this obligation by



consulting with the Department of Human Services (“DHS”) to create a fiscal analysis determining the estimated fiscal impact on Medicaid payment rates for nursing home facilities. See Exhibit K6, K7.

The Board is further tasked with having the rules account for certain fiscal determinations made by DHS. Indeed, Minn. Stat. § 181.213, subd. 2(d)(3) states:

“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.”

While still an estimate at this point, DHS has indicated that the rules will result in an increase in costs that exceed the currently projected operating payment rate and external fixed costs payment rate. See Exhibit K6, at page 4. Because it is anticipated that the rules will require an increase in payment rates determined under Minn. Stat. ch. 256R, the Board will report to the legislature, in consultation with DHS, the increase in funding needed to comply with the new employment standards upon adoption of the rules. Exhibit K8, at page 27. Additionally, the increased minimum wage standards as proposed cannot go into effect until the needed funding is obtained from the legislature and the federal approval is received.

#### **THE RULES ARE CONSTITUTIONAL AND LEGALLY VALID.**

The proposed rules are constitutional and legally valid. Statutes are presumed to be constitutional. *In re Haggerty*, 448 N.W. 2d 363, 365 (Minn. 1989). The rules comply with the enabling statute in Minn. Stat. § 181.213, and other applicable laws.

One public comment received questioned the constitutionality of these rules, on the grounds that the rules would impair the obligation of contracts, which is prohibited by both the United States and Minnesota Constitutions. The purpose of the contracts clause is to “encourage trade and credit by promoting confidence in the stability of contractual obligations.” *U.S. Trust Co. v. New Jersey*, 431 U.S. 1, 15 (1977) (internal citation omitted). However, a state still has “authority to safeguard the vital interests of its people.” *Id.* Here, the legislature instructed the Board to “adopt rules establishing minimum nursing home employment standards that are reasonably necessary and appropriate to protect the health and welfare of nursing home workers.” Minn. Stat. § 181.213, subd. 1(a). Ensuring that the nursing home workers of Minnesota receive suitable pay is clearly within the State’s right to protect its citizenry. *See Minnesota Living Assistance, Inc. v. Peterson*, 899 F.3d 548, 554 (8th Cir. 2018) (finding that Minnesota has an “important interest in the application of its wage and hour laws”). Furthermore, increases in wages are shown to increase worker retention and productivity.<sup>1</sup> An increase in productivity and worker retention will likely improve patient care, protecting yet another group of Minnesota’s citizens.

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<sup>1</sup> Natalia Emanuel, *The Fruits of Our Labor: Essays on Work and Its Impacts* (July 12, 2021) (Ph.D. dissertation, Harvard University) (This piece is currently being expanded upon as a working paper in

Moreover, not every modification of a contractual promise impairs the obligation of contract under federal law. A finding that there has been a technical impairment of a contract is merely a “preliminary step in resolving the more difficult question [of] whether that impairment is permitted under the Constitution.” *Id.* at 21. Increasing a minimum wage falls within the State’s obligation and inherent power to protect the welfare of its people. The Board does not agree that the rules constitute a technical impairment of a contract. However, the rules would still be valid even if there were an impairment because the State’s power to protect public welfare “may be validly exercised under the Contracts Clause *even if* it impairs a contractual obligation so long as it does not destroy it.” *Id.* at 26 (emphasis added). There is no destruction of a contractual obligation in this case—employees and employers are both still required to fulfill their respective responsibilities in an employment contract.

The same public comment also questioned the legality of the rules, on the grounds that the rules would violate a federal law requiring a single state agency to administer Medical Assistance. Federal law dictates that a State Medicaid plan must “specify a single State agency established or designated to administer or supervise the administration of the plan.” 42 C.F.R. § 431.10(b)(1). That agency “may not delegate, to other than its own officials, the authority to supervise the plan or to develop or issue policies, rules, and regulations on program matters.” 42 C.F.R. § 431.10(e).

In Minnesota, DHS administers the Medical Assistance program. Minnesota Statutes chapter 256R delegates to the commissioner of DHS the duty to establish payment rates for nursing facilities receiving medical assistance payments, and the procedures for determining those rates. When determining rates, DHS must take into consideration certain costs, including activities costs, dietary costs, direct care costs, housekeeping costs, and laundry costs. *See* Minn. Stat. § 256R.02. These costs, as defined in statute, include things such as salaries and wages employees relevant to each category. *Id.* Other costs DHS must consider include costs of goods, services and equipment, employee-sponsored retirement plans, and workers’ compensation insurance costs. Minn. Stat. § 256R.10. The legislature tasked the Board with determining employment standards appropriate to protect the health and welfare of nursing home workers. This includes determining a suitable minimum wage. While DHS must set rates of care based on these expenditures, neither state nor federal law dictate that DHS must be the entity to set the underlying costs that it ultimately considers.

The Board must work in tandem with DHS to determine whether an increase in minimum wages would require DHS to increase rates to ensure sufficient reimbursement for certain facilities. These responsibilities do not deprive DHS of any administrative or interpretative powers provided to them by statute. And regardless of the Board’s recommendations, these rules cannot go into effect without DHS requesting an appropriation of funds from the legislature and receiving requisite federal approval. So even *if* DHS affirmatively set provider wages in Medicaid-reimbursed facilities (and it does not), the Board *still* would not supplant DHS authority by setting wages. Indeed, DHS is practically the final arbiter of whether the minimum wage standards go into effect due to their sole ability to request appropriations and federal approval.

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collaboration with Emma Harrington. The most updated version can be found at <https://drive.google.com/file/d/1IMwvmZLIJomiFIWgqKbCNrCXTZ-q-3ZV/view>).

**THE RULE DOES NOT DELEGATE AUTHORITY TO AN OUTSIDE AGENCY, PERSON, OR GROUP.**

All rulemaking authority under the rule is exclusive to the Board. The enabling statute called for the Board to consult with DHS in adopting the rules. DHS was involved throughout the investigation of market conditions, which preceded the drafting and adoption of rules. However, the drafting and approval of the rules was done solely by the Board.

Pursuant to Minn. Stat. § 181.212, subd. 1(a)(1), a designee of DHS was appointed to the Board, and voted in favor of adopting the rules as drafted at the May 9, 2024, meeting. Upon receiving minor, non-substantive edits to the rules from the Minnesota Office of the Revisor of Statutes, the Board reviewed and voted to approve of the edits, prior to their publication in the State Register on June 24, 2024.

**THE RULES ARE CONSISTENT WITH THE DEFINITION OF “RULE.”**

The rules are a statement of general applicability and future effect, to be adopted to implement the specific requirements of Minn. Stat. § 181.213, subd. 1(b). They will therefore have the force and effect of law. Minn. Stat. § 14.02, subd. 4, and Minn. R. 1400.2100, subp. G.

**CONCLUSION**

The Board has established that it has complied with the procedural requirements applicable to the expedited rulemaking process. The Board has acted within its authority pursuant to Minn. Stat. § 181.213 in proposing the rules establishing minimum wages for nursing home workers. The rules follow the requirements of the enabling statute regarding investigations of market conditions and fiscal determinations. Therefore, the Board respectfully requests that the rules be approved.

## **RULE OVERVIEW PARTS 5200.2060 – 5200.2090**

### **Part 5200.2060, Definitions**

#### **Part 5200.2060, subpart 1; Scope**

This subpart establishes the scope of the rules and the applicability of terms defined either under this rule or the NHWSBA.

#### **Part 5200.2060, subpart 2; Certified Nursing Assistant**

This subpart defines the term “Certified Nursing Assistant” as it is to be used in these rules, and is consistent with the requirements of a nursing assistant under Minn. Stat. 144.61A

#### **Part 5200.2060, subpart 3; Licensed Practical Nurse**

This subpart defines the term “Licensed Practical Nurse” as it is to be used in these rules, and is consistent with the requirements of a licensed practical nurse under Minn. Stat. 148.171, subd. 14.

#### **Part 5200.2060, subpart 4; Trained Medication Aide**

This subpart defines the term “Trained Medication Aide” as it is to be used in these rules, and is consistent with the requirements of a licensed practical nurse under Minn. R. Part 4658.1360.

### **Part 5200.2070, Applicability**

#### **Part 5200.2070, subpart 1; statewide minimum wage standards**

This subpart establishes the statewide applicability minimum wage standards established under parts 5200.2080 and 5200.2090.

#### **Part 5200.2070, subpart 2; Appropriation required**

This subpart establishes the requirement that a minimum wage standard established under part 5200.2080 or 5200.2090 is only effective upon the receipt of an appropriation of funds from the Minnesota Legislature, and federal Medicare rate increase.

#### **Part 5200.2070, subpart 3; Modified implementation date.**

This subpart establishes the requirement that if federal approval of a rate increase under part 5200.2070, subpart 2, is obtained after December 1, 2025, minimum wage standard established under part 5200.2080 or 5200.2090 will become effective 30 days after federal approval of a rate increase is obtained.

### **Part 5200.2080, General Wage Standards**

This part establishes the requirement that, effective January 1, 2026, the minimum wage for all nursing home workers is \$19 per hour, and that effective January 1, 2027, the minimum wage for all nursing home workers will be \$20.50 per hour.

**Part 5200.2090 Wage Standards for Certain Occupations,**

This part establishes minimum wage requirements greater than those listed in Part 5200.2080 for certain occupations. Beginning January 1, 2026, the minimum wage for certified nursing assistant is \$22.50 per hour. Beginning January 1, 2027, the minimum wage for certified nursing assistants is \$24 per hour. Beginning January 1, 2026, the minimum wage for trained medication aides is \$23.50 per hour. Beginning January 1, 2027, the minimum wage for trained medication aides is \$25 per hour. Beginning January 1, 2026, the minimum wage for licensed practical nurses is \$27 per hour. Beginning January 1, 2027 the minimum wage for licensed practical nurses is \$28.50 per hour.

Docket No.— 28-9001-40213

# Exhibit K3—Analysis of Compensation Standards Proposals



## Office memo

**Date:** April 27, 2024

**To:** Nursing Home Workforce Standards Board

**From:** Leah Solo, NHWSB Executive Director

### RE: Analysis of Proposals in currently discussed by the NHWSB

During discussion of the proposals submitted to the Board for consideration on March 20, 2024 (hereinafter “Union 2(a) and 2(b)”) at the April 15, 2024 NHWSB Meeting, the Board reviewed the Memo “Analyzing Proposals,” which walks through the NHWSB Act data obligations for analyzing proposals. During that discussion, a request was made by the Board for Staff to analyze 2(a) and 2(b) according to the terms laid out in the memo. In response, staff reached out for assistance from the Department of Labor and Industry to use the data and tools the Board has collected to analyze the proposals. On April 22, 2024, Board Members Lundmark, Rocheleau, and Swanson shared two additional proposals. Below is that analysis of Union 2(a) and 2(b), as well as the additional proposals from Board members Lundmark, Rocheleau, and Swanson (hereinafter “Wage 1 Proposal” and “Amend Time and a Half”).

### Statutory language

To summarize the Board’s statutory obligations with regards to data and setting initial wage standards, there are three items to keep in mind.

1. “The board must adopt rules establishing minimum nursing home employment standards that are reasonably necessary and appropriate to protect the health and welfare of nursing home workers...” Minn. Stat. § 181.213 subd. 1(a). This is the Board’s guiding statute from the legislature. Standards for wages should be reasonably necessary and appropriate to protect the health and welfare of nursing home workers.
2. “The board must investigate market conditions and the existing wages, benefits, and working conditions of nursing home workers for specific geographic areas of the state and specific nursing home occupations.” Minn. Stat. § 181.213 subd. 2(a). This directs the Board to research and gather data about the conditions of nursing home workers. Statute further directed the Board on what data must be collected in Minn. Stat. 181.213, subd. 2(b); an in-depth discussion of each type of information the Board was directed to collect can be found in the April 10, 2024 memo titled “Analyzing Proposals” memo. This is why the Board collected wage data, sought public testimony, and examined cost of living data in Minnesota.
3. “Based on this information, 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 in the relevant geographic area and nursing home occupation.” Minn. Stat. § 181.213 subd. 2(a). This is what we have referred to as the “majority benchmark.” The Board should seek to establish a minimum wage

standard that meets or exceeds the current conditions for a majority of nursing home workers; put another way, the standards the Board sets should attempt to raise the minimum wage to a level beyond the current wages of over half of the nursing home workers in a given geographic area and occupation. The Board should be using the data gathered from the research the Board has done to be able to show this.

The Board should be able to show, based on the research that has been done, that the initial minimum wage standards set by the Board are reasonably necessary and appropriate to protect the health and welfare of nursing home workers and that they are seeking to meet or exceed the current conditions for a majority of workers that fall under the NHWSB Act.

### *Additional language*

In addition to the language directing the Board's general goal, the imperative to research, and the majority benchmark, it is important to keep in mind the process laid out in Minn. Stat. § 181.213 subd. 2 (c-e), regarding the consideration to be given to funding new standards, the acquisition of said funding, and the implementation of standards when additional funding is required. This process has been examined by the Board on several occasions, most notably through the April 10, 2024 "Analyzing Proposals" memo, and the corresponding discussion at the April 11, 2024 meeting of the Board. Below is a summary of relevant information as it pertains to the proposals before the Board; for a more fulsome discussion of this process, please see the April 10, 2024 "Analyzing Proposals" memo.

1. "In considering wage and benefit increases, the board must determine the impact of nursing home operating payment rates determined pursuant to section [256R.21, subdivision 3](#), and the employee benefits portion of the external fixed costs payment rate determined pursuant to section [256R.25](#)..." Minn. Stat. § 181.213 subd. 2 (c). This language is the statutory charge of the Board to look at the costs that the state will incur due to the standards going into effect. Note that this portion of the statute points to parts of the Medicare reimbursement rates for nursing homes as calculated by DHS as being the metric by which the Board determines the cost to the State.
2. "...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." Minn. Stat. § 181.213 subd. 2 (c). This portion of statute gives the direction to the Board to report to the legislature any increase in funding needed as a result of an increase in payment rates to comply with the new standards. The statute does not direct the Board to modify schedules or calculations of payment rates to nursing homes.
3. The next section gives specific instructions about how to calculate any increased need in funding in consultation with the commissioner of DHS. Some specific observations about Minn. Stat. § 181.213, subd. 2(d):
  - a. Section (1) states: "the statewide average wage rates for employees pursuant to section [256R.10](#), subdivision 5, and benefit rates pursuant to section [256R.02, subdivisions 18](#) and 22, as determined by the annual Medicaid cost report used to determine the operating



payment rate and the employee benefits portion of the external fixed costs payment rate for the first day of the calendar year immediately following the date the board has established minimum wage and benefit levels;” This section specifically cites a need to examine a statewide average rate for employees.

- b. Sections (2) and (3) specifically cite the operating payment rate and employee benefits portion of the external fixed costs payment rate and the most recent budget and economic forecast completed under Minn. Stat. § [16A.103](#) as the elements needed to be examined to determine what needs to be reported to the legislature for an appropriation.

## Data Sources

As laid out in statute, the Board used several sources of data and research.

“5b Analysis of Data for WFSB 20240130 11452” from February 8 Board Packet can be referenced for the best compilation of data regarding the requirements of Minn. Stat. §§ 181.213 subd. 2(b)(1),(2),(6). This data is from DHS and comes from the workforce incentive grant program, which allowed DHS to see actual wage-per-hour data on a significant amount of nursing home workers who make less than \$30/hour. Based on a sample of that data from 132 facilities out of approximately 340 possible facilities, one can input a hypothetical minimum wage per hour for one of 5 occupations (CNA, Dietary Aide, Cook, Housekeeping, Activities Aide) and determine the percentage of people working in that profession whose wages currently fall below the proposed minimum standard.

“5a Minnesota Minimum Wages and Benefits – Summary for NHWSB Feb 2024” in the February 8 2024 Board packet laid out minimum wages and other requirements for wages and benefits in Minnesota. Of note in this memo is that many employers in Minneapolis and St. Paul have a minimum wage of \$15.57/hour and that will see an annual increase on 1/1/2025 and each year afterwards. This memo draws heavily on the Minnesota Department of Labor and Industry’s website and relates to requirements under Minn. Stat. § 181.213 subd. 2(b)(5).

The Board also heard a presentation from DEED in regards to the [Cost of Living Tool](#). This tool helps determine what a person or family in Minnesota would need to earn in a year or per hour in order to maintain a very basic standards of living. This helps both understand potential wages needed for the health and welfare of nursing home workers and falls into the category listed in Minn. Stat. § 181.213 subd. 2(b)(7).

To help determine what would be relevant nursing home occupations, the Board examined statute governing nursing home reimbursement in Minn. Stat. § 256R.02. This research helped determine the need to look specifically at Certified Nursing Assistants, Dietary Aides and others as well as understand how we could define categories of occupations. This is in line with Minn. Stat. § 181.213 subd. 2(b)(7).

“Employee Counts” is a data workbook that was shared at the October 23, 2023 Data workgroup meeting. It draws on data provided by DHS from cost reports. This data source includes the number of full or part time employees that are reported to DHS in various categories of workers which can be used to determine the majority benchmark.

Minn. Stat. § 181.213 subd. 2(b)(4) instructed the Board to listen to testimony from current and former nursing home workers, worker organizations, nursing home employers, and employer organizations. The Board did this

through 5 public forums and a set of online questionnaires. Highlights from the forums included workers advocating for \$25/hour and employers asking the Board to ensure the minimum wages were paid for by the legislature. Summaries of the data from the questionnaires can be found under the March 14, 2024 data workgroup meeting materials [NHWSB Data Workgroup meeting materials | Minnesota Department of Labor and Industry \(mn.gov\)](#).

Minn. Stat. § 181.213 subd. 2(b)(3) directed the Board to collect collective bargaining agreements (CBAs). The Board did do this, but determined that because they only represent a third of facilities, they were not the correct data set for comparison with proposed standards.

## Limitations of the Data

No data set is able to show a perfect reflection of market conditions and the lives of nursing home workers. Below are some ways in which the research and data is not a perfect reflection.

### *Differing definitions*

A significant amount of the data the Board has researched comes from DHS, and there may be a difference between what DHS determines are administrative costs and what is meant by statute in excluding “administrative staff” from the definition of nursing home worker. See Minn. Stat. § 256R.02, subd. 4. Staff will continue to work to obtain a more precise definition of the administrative staff that are excepted from the standards the Board must set. Using DHS’s definition of “administrative costs,” a receptionist or a security guard at a nursing home would be excluded from the worker definition, while managers and supervisors for housekeeping and maintenance would be included in the worker definition Minn. Stat. § 256R.02, subd. 4. This uncertainty in definitions that means when staff was determining the ratio of the number of nursing home workers whose wages do not currently exceed the minimum wage of a proposed standard against the number of nursing home workers affected by the standards the Board will set for the purposes of determining if a standard meets the majority benchmark, some people who likely should be included as part of this calculation were excluded, and vice versa.

### *Incomplete data*

While the data supplied by DHS has been the most fulsome collection, it is important to note some gaps in the data. The investigative work of the Board coincided with a special data set that DHS was able to gather when all but a few of the 340+ nursing homes in the state applied for a nursing home workforce incentive grant, giving workers who make under \$30 an hour a special bonus. However, this does not provide a full set of wage data. For instance, it lacked data on anyone making over \$30/hour, meaning it did not provide a statistically significant data on some positions, like LPNs or RNs, or any other individuals making more than \$30/hour. Additionally, though the Board using DHS data was able to gather a statistically sound sample of data on positions such CNAs, housekeeping, dietary aides, cooks, and activities aides, there was not a capacity to gather samples for all positions.

### *Timing and location of public forums*

The Board was able to hold five public forums, three in person and two online. Though the in-person events were held in three very different locations in the vicinity of nursing homes and the online events were held at

different times of day, workers and employers may have had difficulty attending. This absence means that while the Board gathered testimony from dozens of people, categories of issues could have been overlooked with the absence of people who were unable to attend. There was one reported incident where several workers who were ready to speak at a public forum were unable to do so because they needed to stay on shift due to a shortage of staff.

### *Reach of online questionnaires*

Though the Board had over 200 people fill out the online questionnaires, with thousands of workers, hundreds of employers and thousands of people with a stake in nursing homes, it may have fallen short of a statistically significant sample. If it is a statistically unsound sample, the Board should look at it as additional individuals rather than representative of the nursing home workforce as a whole.

*Despite the limitations outlined above, as has been discussed in the Data workgroup and at the Board, the DHS data is the best source the Board has for estimating the impact of the pay standard proposals.*

## Analyzing Wages in Union Proposals 2(a) and 2(b)

### Union Proposals 2(a) and 2(b)

As revised at the March 27, 2024 Special Board meeting, the Union proposals were as follows in “Table 1: Minimum wages by occupation in union proposals 2(a) and 2(b)”:

Table 1: Minimum wages by occupation in union proposals 2(a) and 2(b)

Item	Enactment	2(a)	2(b)
Holiday Pay	1/1/2025	11 specified Holidays where workers would receive time and a half if working.	11 specified Holidays where workers would receive time and a half if working.
General Minimum Wage	1/1/2026	\$19/hour	\$18/hour
General Minimum Wage	1/1/2027	\$20.50/hr.	\$20/hr.
CNA Minimum Wage	1/1/2026	\$22.50/hr.	\$21.50/hr.
CNA Minimum Wage	1/1/2027	\$24/hr.	\$22.50/hr.
TMA Minimum Wage	1/1/2026	\$23.50/hr.	\$22.50/hr.

TMA Minimum Wage	1/1/2027	\$25/hr.	\$23.50/hr.
LPN Minimum Wage	1/1/2026	\$27/hr.	\$26/hr.
LPN Minimum Wage	1/1/2027	\$28.50/hr.	\$28/hr

## Meeting the Majority Benchmark

There are two pieces of information that the Board needs to examine to determine if a proposal meets the majority benchmark: first is the number of workers that fall under the NHWSB Act, and second is the number of workers for whom the proposal would meet or exceed their current wage rate.

### *Determining the total number of workers under the NHWSB Act*

The first step to determining whether a proposal meets the majority benchmark is to determine the total number of nursing home workers of a given geographic region and occupation. This number becomes the denominator in the fraction that illustrates if the majority benchmark is being met. The best source of this information is the “Employee Counts” data workbook that was shared at the October 23, 2023 Data workgroup meeting. Noting the shortcomings of the data listed in this memo, “Table 2:Employee counts” shares the breakdown of the employees falling under the NHWSB Act:

Table 2: Employee counts

Job Category/Dept.	Employee Count (PT & FT)		
Activities	1,424	5%	
C.N.A.	8,888	34%	
Dietary	4,750	18%	13% dietary aides, 5% cooks
Housekeeping	1,474	6%	
Laundry	424	2%	
L.P.N.	2,546	10%	
Plant/Maintenance	845	3%	
Medical Records	694	3%	
Mental Health Worker	89	0%	
Other Direct Care	463	2%	
R.N.	2,695	10%	
Social Worker	639	2%	
T.M.A.	1,075	4%	
<b>Total falling under NHWSBA</b>	<b>26,006</b>		

Note: all employee counts are done at a statewide level, as the proposals being examined herein would establish statewide minimum wages.

*Calculating the percentages affected by proposed minimum standards from "5b Analysis of Data..." worksheet*

After determining employee count numbers, the next step is to determine the number of employees for a given occupation whose current wages fall below the minimum wage set in the proposed standard. This number serves as the numerator in the fraction that illustrates if the majority benchmark is being met. The number can be found by using the "5b Analysis of Data for WFSB 20240130 11452" spreadsheet. This spreadsheet allows the user to enter a theoretical wage and it then calculates the number of workers from the sample do not currently meet that minimum standard. That percentage is listed in "Table 3" and "Table 4" below in the row "percentage." The row "% of all workers as defined..." in Table 3 and Table 4 below takes the percentage of a particular occupation that falls below the minimum standard being proposed and translates that into a percentage of the entire NHWSB Act workforce. The row "Total % of all workers..." combines the row above into a total number of workers whose current wages fall below the proposed standard.

Table 3: Analysis of data using union proposal 2(a)

<b>UNION 2(a) Proposal</b>	CNA	Cook	Dietary Aide	Housekeeping	Act Aide
Possible Wage	\$ 22.50	\$ 19.00	\$ 19.00	\$ 19.00	\$ 19.00
Current Median	\$ 20.30	\$ 19.68	\$ 16.06	\$ 16.99	\$ 16.82
Percentage	76%	44%	88%	83%	72%
% of all workers as defined by NHWSBA for whom the proposed standard is greater than their current wage	26%	2%	11%	5%	4%
<b>Total % of all workers as defined by NHWSBA for whom the proposed standard is greater than their current wage as able to be demonstrated by "5b Analysis of Data ... worksheet"</b>	<b>48%</b>				

Table 4: Analysis of data using union proposal 2(b)

<b>UNION 2(b) Proposal</b>	CNA	Cook	Dietary Aide	Housekeeping	Act Aide
Possible Wage	\$ 21.50	\$ 18.00	\$ 18.00	\$ 18.00	\$ 18.00
Median	\$ 20.31	\$ 19.84	\$ 16.05	\$ 16.90	\$ 16.79
Percentage	64%	27%	80%	67%	65%
% of all workers as defined by NHWSBA for whom the proposed standard is greater than their current wage	22%	1%	10%	4%	4%
<b>Total % of all workers as defined by NHWSBA for whom the proposed standard is greater than their current wage as able to be demonstrated by "5b Analysis of Data ... worksheet"</b>	<b>41%</b>				

So, with data that can be calculated using the "5b Analysis of data... worksheet" Union 2(a) meets or exceeds for 48% and Union 2(b) meets or exceeds for 41% of workers. This conclusion is reached by adding the percentages in the line % of all workers as defined by NHWSBA for whom the proposed standard is greater than their current wage. That lines calculation was made by taking the percentage of a particular occupation that fall below the

proposed minimum and multiplying it by the percentage of the workforce as a whole that work in that occupation. For example, in the 2(b) proposal, 64% of CNAs fall below the proposed standard and CNAs represent 34% of the workforce. Multiplying 64% of CNAs times 34% of the workforce, produces 22% of the workforce who are CNAs and fall below the proposed standard.

### *Additional Calculations*

The calculation so far accounts for CNAs (34% of the workforce), Dietary (18%), Housekeeping (6%), and Activities (5%) or 63% of the nursing home workers as defined by the NHWSB Act. Of the remaining workers, let's first examine TMAs.

Conversations at the NHWSB meetings have generally agreed that TMAs earn \$1 more per hour than CNAs. Union proposals 2(a) and 2(b) both propose TMAs making \$1 more per hour than CNAs. The Board could estimate then that the proposals would have a similar effect on TMAs as CNAs because the proposals for TMAs are \$1 above CNA wages. It would follow then that for Union 2(a) proposal, the proposed initial minimum wage of \$23.50 per hour would meet or exceed current conditions for 76% of TMAs and for Union 2(b) proposal, the proposed initial minimum wage of \$22.50 per hour would meet or exceed current conditions for 64% of TMAs. With TMAs making up 4% of the workforce, that adds 3% of the workforce to Union 2(a) and 2.6% of the workforce to Union 2(b).

Next, the Board could examine LPNs. It has been discussed from the workforce incentive grants data, that not a large percentage of LPNs qualified for the grant. That means that many LPNs make over \$30/hour. The proposals have an LPN's minimum wage being under \$30/hour, peaking at \$28.50 and \$28 in 2027. With the proposed LPN minimum wages falling below \$30/hour and understanding that only a small percentage of LPNs were listed in our data as earning less than \$30/hour, one could assume that it would be a minimal percentage of the 10% of the workforce that are LPNs that currently fall below the minimum wages in the proposals. Therefore, the proposed LPN minimum wages do not add to the workforce impacted by the proposed standards for the purposes of determining if the proposals meet the majority benchmark.

For Laundry, discussions and anecdotal evidence presented by Board members have drawn parallels between Housekeeping and Laundry salaries. If the 2% of the workforce that are Laundry workers are affected by the minimums at the same rates as housekeeping, that would add another 1.7% of the workforce to Union 2(a) and 1.3% of the workforce to Union 2(b).

RN's do not have their own minimum wage in either proposal, leaving them with the \$19/hour and \$18/hour minimum wages. Based upon the anecdotal reports of Board Members in discussion, and the extensive training required of RNs, it would appear that RNs generally already receive wages that would mean the standards proposed here would have a negligible impact on this occupation for determining if the proposals meet the majority benchmark.

There currently exists no method to analyze the impact of standards for Plant/Maintenance, Medical records, Social Workers, Mental health workers, and other direct care staff in terms of meeting the majority benchmark. Together these occupations make up 10% of the workforce. Consequently, the conclusions below take a conservative view of this sector of the workforce and assume that no worker's wage falls below the minimum wage set by a proposed standard. This is done to ensure that the majority benchmark calculation is not relying on overly optimistic assumptions.

Without knowing the final section of the workforce, the Board can estimate, based on the collected data, that the proposals will meet or exceed the market conditions for at least the following percentage of workers:

**Union 2(a) 52.7% (48% 5b analysis worksheet/Table 3 + 3% TMAs + 1.7% Laundry)**

**Union 2(b) 44.9%(41% 5b analysis worksheet/Table 4 + 2.6% TMAs + 1.3% Laundry)**

## Health and Welfare of Nursing Home Workers

As has been discussed, an important metric to look at regarding the health and welfare of nursing home workers is the Cost of living in Minnesota. To use the [Cost of Living Tool](#), the tool asks if a person is partnered or single. If partnered, it asks if one is working full time, one working full time and the other part time, or both are working full time. It also asks if there are children in the household, though as a limitation on this data, does not specify if there are any additional custody or child support arrangements.

In the questionnaire for workers, the Board asked if a worker is single, married, divorced, separated, widowed, or co-habiting. The Board also asked if the worker has dependents in the home. 69 people answered these questions. Below are some highlights from those answers which demonstrate there are a wide variety of family situations that nursing home workers find themselves in ranging from living alone with no children to being partnered with more than 4 children in the home.

- Using the filter for married/co-habiting, 38 out of 69 people are living with another adult.
- Of those 38, 17 had no kids, 14 had 1-2kids, 5 had 3-4 kids, 2 had more than 4 kids, meaning 2 adult households had a 55% chance of having at least 1-2 kids.
- When filtered, “single, divorced, separated, widowed”, 23 had no kids, 5 had 1-2 kids, 1 had 3-4 kids, 2 had more than 4 kids, meaning 26% of one adult households having at least 1-2 kids.
- Some of both the one and two adult households with part time/on call workers had kids as well, though much more common with two adult households.
- 29 of the 69 workers reported kids in the home with an average of 2 kids per home. 21 of those homes reported having another adult in the home.
- Of those reporting not having any dependents in their home, the majority identified as being the only adult (single, widowed, divorced, separated).

Understanding from the questionnaire that nursing home workers live in a wide variety of household situations, from working part time to full time, partnered or single, no kids to more than 4 kids in the household, below in “Table 5: Cost of living in MN data” the 24 different permutations of the minimum wages that a single person or two adults living together would need to earn to meet the basic needs in Minnesota as showing in the Cost of Living Tool referenced above. As Table 5 shows, hourly wages go from \$10.64 to \$44.78 and annual family income from \$35k-\$93k.

When looking at these statewide average cost of living numbers, the median wage is between \$22.13 and \$22.95. The average is \$24.14. Additionally, the webpage on the Cost of Living Tool’s methodology notes that “Partnered, 1 full-time and 1 part-time worker, 1 child, provides a standard yearly cost and hourly wage need for a typical family, regardless of how the weekly work hours are distributed between the two adults.”([Methodology for our Cost of Living in Minnesota tool / Minnesota Department of Employment and](#)

[Economic Development \(mn.gov\)](#)). In the statewide average, the wage that both workers would need to earn is \$19.46.

Though nursing home workers report a wide variety of home life situations that would require different levels of income, above it is shown that having 2 adults and 2 kids in a house is a common occurrence, as is being a single adult. As an example of what the adults in the home with two kids would need to earn in order to sustain a household if one was working full time and one was working part time, the wage would be \$24.47. For the single adult, the wage would be \$16.82-17.01 depending on age.

Table 5: Cost of living in MN data

Adults	Full time/part time	Kids	Annual income	Hourly wage
2 adults, 19-50y	Both full time	0	\$44k	\$10.64
2 adults 50+y	Both full time	0	\$45k	\$10.83
2 adults, 19-50y	One full, one part time	0	\$44k	\$14.18
2 adults, 50+y	One full, one part time	0	\$45k	\$14.44
2 adults	Both full time	1	\$70k	\$16.81
1 adult, 19-50 y	full time	0	\$35k	\$16.82
1 adult,50 + y	full time	0	\$35k	\$17.01
<b>2 adults (typical MN Household)</b>	<b>One full, one part time</b>	<b>1</b>	<b>\$61k</b>	<b>\$19.46</b>
2 adults, 19-50y	one full time	0	\$43k	\$20.73
2 adults, 50+y	One full time	0	\$44k	\$21.10
2 adults	Both full time	2	\$90k	\$21.70
<b>2 adults (Median)</b>	<b>Both full time</b>	<b>3</b>	<b>\$92K</b>	<b>\$22.13</b>
<b>2 adults (Median)</b>	<b>Both full time</b>	<b>4</b>	<b>\$95k</b>	<b>\$22.95</b>
2 adults	One full time	1	\$51k	\$24.43
2 adults	One full, one part time	2	\$76k	\$24.47
2 adults	One full, one part time	3	\$78k	\$25.03
2 adults	One full, one part time	4	\$81k	\$26.11
1 adult	full time	1	\$60k	\$28.82
2 adults	one full time	2	\$62k	\$29.81
2 adults	one full time	3	\$63k	\$30.48
2 adults	one full time	4	\$67k	\$32.02
1 adult	full time	2	\$86k	\$41.31
1 adult	full time	3	\$90k	\$43.18
1 adult	full time	4	\$93k	\$44.78
<b>Average</b>				<b>\$24.14</b>

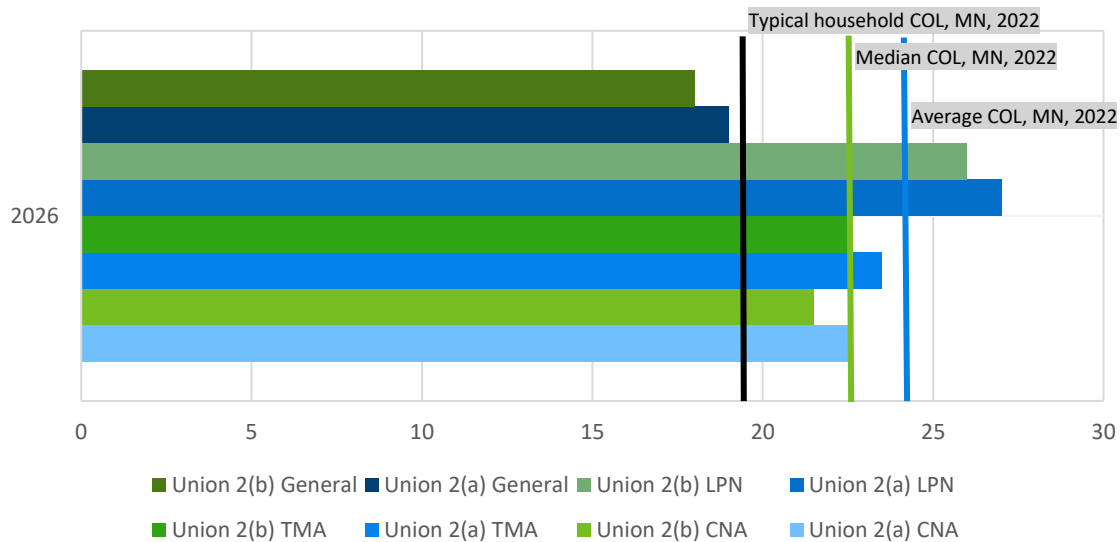
*Comparing Median and Average Cost of living with Union 2(a) and 2(b) proposals*

The median wage as presented above is between \$22.13 and \$22.95. The average is \$24.14.



The general minimum wage for both proposals falls below the median and average wages for a cost of living in Minnesota. Union 2(a) CNA wage for 2026 falls right in the middle of the median wages, but below the average. Union 2(b) CNA wage falls below the average and median. For the TMA wages, Union 2(a) is above the medians the first year, while Union 2(b) is in the middle of the median the first year. LPN wages are above the median and averages all years. Though the 2027 wages are higher, they are also an additional year out from the cost of living data which is from 2022. These are all shown below in “Graph 1: Comparing Union 2(a) and 2(b) 2026 wages with cost of living (COL), 2022.”

Graph 1: Comparing Union 2(a) and 2(b) 2026 wages with Cost of Living (COL), 2022



## Conclusion of analysis wages in Union 2(a) and 2(b)

Based on the data collected by the Board, Union 2(a) does a better job of meeting the majority benchmark and lifts more people into a cost of living wage than 2(b). Union 2(b)'s minimum wages does not quite make the majority benchmark with available data and certainly lifts many people closer to meeting the cost of living in Minnesota.

## Analysis of Wage 1 Proposal

### Proposal 1 Wage Standards

Proposal 1 Wage is divided into two parts. The first part is a placeholder for minimum wages for nursing home employees to be filled in once a data request is received. Staff of the Board, in conjunction with the Department of Human Services are actively working to fulfill this request and will have the data requested shortly.

The second part of Proposal 1 Wage is a set of requirements for any standard. It reads:

“Part 2

For any standard approved by the Board, the cost estimates and the required new appropriation must:

- 1) Estimate each facility’s rate impact in relation to the new standard. The estimate must be facility specific and based on information provided to the commissioner [of DHS] about current wage rates at each facility.
- 2) The commissioner must, when determining the total and facility specific costs to meet the standard, include:
  - a) the increased cost to wages;
  - b) the employer’s share of FICA taxes, Medicare taxes, state and federal unemployment taxes, worker’s compensation, pensions, contributions to employee retirement accounts cost increases attributable to a standard.
  - c) the indirect costs as defined by the board, resulting from the implementation of a standard.
- 3) Nursing facility rates will be adjusted by the amounts determined in (a) through (c) on the first day of the previous month before the implementation date of a standard. Payments to facilities under this section shall be included in the external fixed payment rate under 256R.25.
- 4) If the Legislature does not approve an appropriation under this section prior to the effective date of the new standard, then the new standard approved by the Board cannot take effect.”

### **Meeting the Majority Benchmark**

Determining whether this proposal meets the majority benchmark will largely rest upon the level at which the minimum wage(s) is (are) set. It is currently impossible to determine if this proposal will meet the majority benchmark without a minimum wage.

### **Health and Welfare of Nursing Home Workers**

Determining how this proposal meets our goal for the health and welfare of nursing home workers will largely rest on the level at which minimum wage is set. Without those levels, the wage cannot be compared to cost of living or any other measurements.

### **Interplay with Statutory Requirements and Authority**

Part 2 of Proposal 1 contains provisions that would require statutory changes before they could be written into rule or used by DHS in costing out proposals. Changes required include:

1. Part 2 includes many references to facility specific rates and costs when considering the costs of a proposed standard. Minn. Stat. § 181.213, subd. 2(d)(1) directs the Board, in consultation with DHS, to examine statewide averages to determine the costs a proposed standard would have. Statute does not prohibit the Board from collecting or utilized facility specific data, but it is not required under statute.
2. Part 2, section 2, directs the DHS commissioner to determine costs in a way contrary to their usual method for fiscal notes and is different from the directions in statute. The statutes governing the Board do not vest the Board with the power to direct how the Commissioner of Human Services is to perform any fiscal analysis required under Minn. Stat. § 181.213 subd. 2 (c)-(d).

3. Part 2, section 3, contemplates securing funds beyond what is written in statute. Statute states what is to be reported to the legislature and based upon that report whether additional funding will be needed. Additionally, statute does not grant the Board the power to change schedules for changing rates or add additional amounts to rates given to nursing facilities. This proposal would require such authority and changing how reimbursement rates are set is beyond the scope of the Board's authority and beyond what can be done in rules under the NHWSB Act.
4. Part 2, section 4, adds restrictions to not allow standards to go into effect until that additional funding is secured from the legislature. Minn. Stat. §§ 181.213, subd. 2(a), and 181.213, subd. 2(d)(3) govern when initial standards will go into effect and hold that initial standards will go into effect on January 1, 2025, or if an appropriation is needed, when appropriation is secured for the additional cost to the state and federal approval of the rate increase is obtained.

## Analysis of Holiday Pay in Union 2(a) and 2(b) and Amend Time and a half

### Holiday Pay Proposal in 2(a) and 2(b)

In proposals 2(a) and 2(b), it is proposed that nursing home workers are paid time and a half on the 11 state holidays observed in Minnesota pursuant to Minn. Stat. 645.44, subd. 5(a). Those days are as follows: New Years Day, January 1; Martin Luther King's Birthday, the third Monday in January; Washington's and Lincoln's Birthday, the third Monday in February; Memorial Day, the last Monday in May; Juneteenth, June 19; Independence Day, July 4; Labor Day, the first Monday in September; Indigenous Peoples Day, the second Monday in October; Veterans Day, November 11; Thanksgiving Day, the fourth Thursday in November; and Christmas Day, December 25. Nursing home employers, like some Minnesota public employers, would have the option to elect to include as a "holiday" the Friday after Thanksgiving but not include Indigenous Peoples Day.

### Available Data

The data available on Holiday Pay is much more limited than what is available for wages.

One source is the questionnaire for employees which included the question "If there were additional funds for compensation and benefits, what would be your top three choices for that funding to go toward?" The answers for this question in order from most to least popular where:

1. Raise in Wages (100%)
2. Pension or other retirement plan (47.14%)
3. **Paid Holidays (38.57% - tie) & Health Insurance (38.57%- tie)**
4. Childcare (20%)
5. Long-term or short-term disability insurance (17.14%)
6. Dental Insurance (12.86%)
7. Group Life Insurance (5.71%)

Regarding it can be concluded that additional holidays paid at time and a half for those working would be a popular benefit for nursing home employees.

Another other source of data that was collected are the Collective Bargaining agreements (CBAs). Of 36 CBAs listed under “Long Term Care - Nursing Homes & Greater MN Hospitals” at [Worksites \(seiuhealthcaremn.org\)](http://worksites.seiuhealthcaremn.org), the CBAs had on average and a median of 7 recognized holidays per year, including holidays not recognized by Minn. Stat. 645.44, subd. 5(a), such as Easter or Christmas Eve. If the holidays that are not included in proposals 2(a) and 2(b) are removed, the average number of holidays a worker is given is 6.2 and the median is 6 holidays. In these CBAs, the average pay is 1.88 times regular pay, as a result of some CBAs having provisions that provide for holiday pay in excess of time and a half. The holidays observed by a CBA but not recognized by Minn. Stat. 645.44, subd. 5(a) would remain as holidays pursuant to the individual CBA during the agreement’s lifespan, which would result in some nursing home workers and employers observing more than 11 holidays in a year.

So, for the sample of nursing home workers under a CBA, currently averaging 6.2 holidays listed in Minn. Stat. 645.44, subd. 5(a), proposals 2(a) and 2(b) would add on average 4.8 holidays where those who work would be paid time and a half of their usual rate of pay. None of the CBAs had all 11 holidays that are named in 2(a) and 2(b) included. This means 100% of workers under these CBAs would see a benefit to this proposal.

### **Conclusion on Holiday Pay Proposal in 2(a) and 2(b)**

Though the data is quite limited in regard to this proposal, what data is available indicates that this would be a welcome benefit and that it would benefit a majority of nursing home workers.

### **Amendment to Time and a Half Proposal**

In regard to the Union Proposals 2(a) and 2(b), which proposed time and a half for those working the 11 state designated holidays, with the option to swap out Indigenous Peoples Day for the day after Thanksgiving, the employer’s proposal is to amend that proposal as such: “To accommodate religious, cultural and local preference, nursing facility employers may select different holidays to meet the total number of holidays mandated by rule.”

As was discussed above, based on the data that the Board has, while limited, would indicate that having 11 holidays paid at time and a half would be a benefit that would have an impact on many workers and likely would meet the majority benchmark. For this proposal, however, since the employer would have flexibility to count any holiday as one of the 11 holidays, the employer could count holidays like Easter and Christmas Eve as holidays meeting this standard. So, in this case, it would be appropriate to use the average of 7 holidays found in the CBAs as the number to which to compare the proposal. In other words, on average, based on the sample CBAs, this proposal would add 4 additional holidays those who work would be paid time and a half of their usual rate of pay.

Though this proposal would allow greater employer flexibility in determining which holidays a nursing home will observe. However, this flexibility for the employer may in turn require extra scrutiny by the Board to ensure that nursing home workers are being educated and noticed about their rights pursuant to Minn. Stat. §§ 181.214 and 181.215.

Docket No.— 28-9001-40213

# Exhibit K4—NHWSB Meeting Minutes

# Meeting Minutes: Nursing Home Workforce Standards Board

Date: Thursday, April 11, 2024

Minutes prepared by: Linnea Becerra

Location: Minnesota Room (DLI) and Hybrid

## Members Present

- Commissioner Nicole Blissenbach (present at 11:15 a.m.)
- Chair Jaime Gulley
- Kim Brenne
- Maria King
- Michelle Armstrong (remotely)
- Paula Rocheleau
- Mary Swanson (remotely)

## Visitors

- Todd Bergstrom
- Peter Butler – DHS
- Jeff Bostic
- Brian Elliott
- Nicole Mattson (remotely)
- Casey Murphy (remotely)
- Toby Pearson (remotely)
- Chris Zempel – DHS

## DLI Staff

- Ali Afsharjavan
- Linnea Becerra
- Paul Enger
- Josiah Moore (remotely)
- Leah Solo

## Agenda items

1. **Call to order** – The meeting was called to order by Jamie Gulley. A roll call was taken, and a quorum was declared. The meeting was called to order at 11:07 a.m.
2. **Approval of agenda** - A motion to approve the agenda as presented and to acknowledge that attendees are seated at the main table due to limited seating was made by Paula Rocheleau and seconded by Maria King. Item was presented for discussion, roll call was taken, and the motion passed unanimously.
3. **Approval of drafted meeting minutes** – A motion to approve the 3/27/24 drafted meeting minutes as presented was made by Michelle Armstrong, seconded by Kim Brenne. Item was presented for discussion, roll call was taken, and the motion passed unanimously.
4. **Board Updates**
  - Executive Director Solo presented a memo on analyzing proposals which was a compilation of previous memos, created to guide discussion on the overall goal as prescribed by the legislature. Director Solo

quoted the statute which says “[t]he board must adopt rules establishing minimum nursing home employment standards that are reasonably necessary and appropriate to protect the health and welfare of nursing home workers...” additionally the board needs to set initial standards that must include wage standards. Director Solo stated that the board must seek a majority benchmark and quoted statute saying, “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 in the relevant geographic area and nursing home occupation.” Paula Rocheleau asked for clarification around the phrasing “meeting or exceeding” in relation to the current wages being paid to workers. There was discussion among board members regarding this language with the conclusion being the minimum standard should meet or exceed the median and that majority is 50% + 1. Executive Director Leah Solo then walked through the ‘Data to use’ section of the memo which pulls language directly from statute, the research the NHWSB has already done, and the potential questions the board can ask to continue decision making.

- Kim Brenne introduced Peter Butler the budget director from the Aging Disability Services Administration, a portion of DHS that looks at long term care impacts, who prepared a fiscal note. Peter introduced his colleague Chris Zempel, the fiscal policy director for DHS. Peter began by talking through the fiscal note process including that the format presented is what the department would formally send to the legislature. Peter then walked through Workforce Standards Board Scenario – Holiday Pay Only fiscal note by starting with the assumptions presented on the second page of the document. Peter highlighted that this fiscal note would not require the passing of an appropriation and employers could forgo large wage increases due to this benefit. Mr. Butler then went over the Workforce Standards Board Scenario- Holiday Pay and Wage Floor fiscal note by first stating that it would have a fiscal impact of 2.2 million to the general fund in fiscal year 2028 and about 6.9 million in fiscal year 2029. Peter then reviewed the assumptions made in this fiscal note highlighting the step increases in the proposal (January 1, 2026, and January 1, 2027) as well as the share of the costs distributed between State, Federal, and Local municipalities. The fiscal note will continue to change based on the release of upcoming forecasts and budgets. Paula Rocheleau asked if there could be a current rate increase added to the wage standard proposal, there was discussion about who can make that request and whether it is within the board’s purview to make such a request. Many board members added their thoughts around rate increases and funding formulas or one-time payments. After discussion, the board made a request to DLI’s Office of General Counsel to investigate whether there could be proposals contingent upon increased funding. It was clarified that the Workforce Standards Board Scenario- Holiday Pay and Wage Floor fiscal note would require an appropriation. Members discussed the two step increase formulas and questioned whether the increased rate in the second step would mean much as it is years away.
- Chair Gulley brought the Posting and Notice Requirements from the March 27 meeting to the table, Michelle Armstrong made a motion to approve the posting and notice requirements, Commissioner Blissenbach seconded the motion. The item was presented for discussion and there was a question about edits of the Posting and Notice Requirements during the rule making process. Commissioner Blissenbach and OGC clarified that they can be amended as long as the changes are not substantial. Roll call was taken, and the motion passed unanimously.
- Paula Rocheleau spoke about the Memorandum brought by herself, Mary Swanson, and Katie Lundmark and asked that it be added to the next meeting’s agenda for a vote by the board, saying they are willing to make edits to the document.

**5. New Business –**

- Oak Hills Living Center in New Ulm, Minnesota has extended an invitation for the board to tour. Executive Director Solo asked if the board would like to accept Oak Hill's invitation. A couple members indicated that they would like to attend that tour, scheduled for May 15.

**6. Next Meeting – Monday April 15, 2:30 p.m.****Adjournment:**

A motion made by Maria King to adjourn at 12:42 p.m., seconded by Kim Brenne. A roll call was taken, and the motion passed unanimously.



# Meeting Minutes: Nursing Home Workforce Standards Board

Date: Thursday, May 9, 2024

Minutes prepared by: Linnea Becerra

Location: Minnesota Room, DLI, 443 Lafayette Rd. N., St. Paul, MN 55155 and online via Webex

## Members Present

- Commissioner Nicole Blissenbach (present at 11:08)
- Chair Jaime Gulley
- Michelle Armstrong
- Kim Brenne
- Maria King (remotely)
- Katie Lundmark
- Paula Rocheleau (remotely)
- Mary Swanson

## Visitors

- Todd Bergstrom
- Jeff Bostic
- Brian Elliott
- Casey Murphy (remotely)
- Toby Pearson (remotely)
- Kari Thurlow (remotely)

## DLI Staff

- Ali Afsharjavan (remotely)
- Linnea Becerra
- Paul Enger
- Leah Solo

## Agenda items

1. **Call to order** – The meeting was called to order by Chair Jamie Gulley at 11:01 a.m. Roll call was taken by the secretary and a quorum was declared.
2. **Approval of agenda** - A motion to approve the agenda as presented was made by Kim Brenne, seconded by Mary Swanson. Item was presented for discussion; roll call was taken and the motion passed unanimously.
3. **Approval of drafted meeting minutes** – A motion to approve the April 29, 2024 drafted meeting minutes as presented was made by Kim Brenne, seconded by Mary Swanson. Roll call was taken, the motion passed unanimously.
4. **Board Updates**
  - Executive Director Solo introduced ‘Review of data for Board Meeting’ by board member Lundmark and the ‘Data request response May 8, 2024’ by Director Elyse Bailey as well as the ‘Cost to Nursing Facilities of Proposed Standards April 29, 2024’ which board member Lundmark explained. Chair Gulley posed questions about the data workgroup taking on the task of gathering and interpreting more data

regarding the overall costs for facilities implementing the new minimum wage standards. The board discussed this and concluded that yes, the data workgroup should do more digging into the numbers and engage in robust discussion while acknowledging that the November forecast will ultimately influence that discussion. Todd Bergstrom and Jeff Bostic were invited to the table by the board to discuss the data collection and its implications. The Long-Term Care Imperative collected responses from employers for over 9,000 employees and their current base wage and compensated hours for the month of March. The chart explains the projected upfront cost of the standards. This survey only looked at the nursing home workers who would be affected by the initial standards going into effect. See 'Cost to Nursing Facilities of Proposed Standards April 29 2024' in Meeting Materials. Todd spoke about the chart not taking wage compression or other operating costs into account. Jeff noted that implementing the standards will take a lot of money from the facilities up front.

- OGC representative Paul Enger reviewed the rulemaking process and deadlines using the chart in the board packet.
- Executive Director Leah Solo reviewed the Minimum Nursing Wage Standards that were initially voted upon at the last meeting. Paula Rocheleau asked about the standards applying to administrative staff or not, pointing out that clerical staff are sometimes classified as administrative staff. There was acknowledgement that this is still an unsettled question. There was discussion about the reading of rules and statute to decide who is covered. It was discussed that labor standards would be the ones looking closely at this question when complaints come in and that they would likely have enough from the statute and rules to settle whether somebody is an administrative staff.
- There was discussion about nursing home worker and nursing home employer.
- Executive Director Solo talked about the amendment to the Holiday Pay proposal being an agreement between the employees and the employer though the adopted language only referenced the employee. The draft rules are written with the initial meaning in mind. Employers set a calendar with those four optional holidays with employee agreement. There was discussion about a 24-hour period for holiday pay and whether they should be designated, midnight-to-midnight in this case, or any 24-hour period. There was editing of the lettering and wording in
- There was a motion to approve the Minimum Nursing Home Wage Standards by Michelle Armstrong, seconded by Commissioner Blissenbach. A roll call was taken, and the motion passed with six yes votes and three abstentions.
- There was a motion to approve the Holiday Pay Standards by Michelle Armstrong, seconded by Commissioner Blissenbach.
  - There was then a motion to amend the Holiday Pay Standards by rewriting the language in subpart 2(a) to read "The start and stop times for the 24-hour period comprising a holiday can be modified by an employer if such change is agreed upon by a majority of affected nursing home workers or the exclusive representative of the affected nursing home workers if one exists." By Commissioner Blissenbach. The motion was seconded by Kim Brenne. A roll call was taken, the motion carried with three members abstaining and the rest voting to approve.
  - The motion to approve the Holiday Pay Standards was taken back up and a roll call was taken. The motion carried with six members voting to approve and three abstaining.

**5. New Business –**

- The board will need to look at curriculum over the summer which will require a public hearing.
- There will need to be a process on waivers and variances.
- Principles meeting occurred between the last board meeting and this one. Executive Director Solo is working on track changes for the group to work on a take up again at the next meeting. There was good discussion at the principles meeting.

- 

**6. Next Meeting – Thursday, June 13, 2024, at 11 a.m. in the Minnesota Room****Adjournment:**

A motion made by Katie Lundmark to adjourn the meeting at 12:30 p.m., seconded by Michelle Armstrong. A roll call was taken, the motion passed unanimously.

# Minutes: Nursing Home Workforce Standards Board

Date: Wednesday, Oct. 2, 2024

Minutes prepared by: Linnea Becerra

Location: Hybrid – Washington Room at the Department of Labor and Industry and via Webex

## Attendance

### Members present

Commissioner Nicole Blissenbach

Jamie Gulley

Michelle Armstrong

Kim Brenne (remotely)

Michele Fredrickson (remotely)

Maria King (remotely)

Katie Lundmark (remotely)

Mary Swanson (remotely)

Paula Rocheleau (remotely)

### Visitors present

Todd Bergstrom

Jeff Bostic

Krystle Conley (remotely)

Brian Elliott (remotely)

Rachel Estroff (remotely)

Bob Fischer (remotely)

Blaine Gamst (remotely)

Brooke Hein (remotely)

Mike Jodouin (remotely)

Toby Pearson (remotely)

Cami Peterson-DeVries (remotely)

Brenda Podratz (remotely)

Brian Vamstad (remotely)

Kayla

### DLI staff members present

Ali Afsharjavan (remotely)

Linnea Becerra

Paul Enger

Leah Solo

## Agenda items

1. **Call to order** – the special meeting was called to order by Chair Jamie Gulley at 2:03 p.m. Roll call was taken. A quorum was declared.
2. **Approval of agenda** – a motion to approve the agenda as presented was made by Maria King and seconded by Michelle Armstrong. A roll call vote was taken and the motion passed unanimously.
3. **Approval of drafted meeting minutes** – a motion to approve the Sept. 12, 2024, drafted meeting minutes as presented was made by King and seconded by Armstrong. A roll call vote was taken and the motion passed unanimously.
4. **Board updates** –
  - Executive Director Leah Solo updated the board about the status of the rules. Paul Enger (Department of Labor and Industry’s Office of General Counsel) explained to the board the steps moving forward.
  - A motion to file the order to adopt the wage rules was made by Commissioner Blissenbach and seconded by Armstrong. A roll call vote was taken and the motion passed with six votes affirmatively and three votes in abstention.
  - Paula Rocheleau discussed the memo she sent with Katie Lundmark and Mary Swanson regarding the employers abstaining from votes. This memo has been submitted for public record and is posted in multiple places for the public to access.
  - Gulley opened the floor for discussion about the worker certification, posting notice and holiday pay rule comments that were submitted to the eComments page on the Office of Administrative Hearings website, as well as those submitted directly to the Department of Labor and Industry’s rules email address.
  - Executive Director Solo reported there were 56 comments submitted: 55 in opposition of the rules and one in support. She said the purpose of discussion at this time is to highlight concerns so staff members have time to work on answers before the regularly scheduled meeting Oct. 10. She said staff members are being cognizant of the tight timeline of implementation; she opened the floor for discussion.
  - Armstrong began the discussion by highlighting common themes, such as: financial challenges; scheduling and staffing challenges; vendor and contract issues; and the time crunch of implementing the standards by the beginning of the year.
  - There was discussion about the vendor contract complications, as well as the need to change schedules. Rocheleau asked for clarification and understanding about the arguments presented in the Fox Rothschild (representing Leading Age and Care Providers of Minnesota) comment. There was discussion about the comment’s assertion that the rules are subject to federal pre-emption by the National Labor Relations Act. Additionally, a couple of board members discussed the possibility of seeing the filing before sending it to the administrative law judge. There was also discussion about the nursing homes’ voting mechanism for the designated holidays.
  - There was discussion about substantive and nonsubstantive changes to the rules at this stage.
  - The board will discuss specific questions and themes at the coming regularly scheduled board meeting.
5. **New business** –
6. **Next meeting** – the next meeting is Thursday, Oct. 10, 2024, at 11 a.m.

## Adjournment

A motion was made by Kim Brenne to adjourn the meeting at 3 p.m. and seconded by King. A roll call vote was taken and the motion passed unanimously.

# Agenda: Nursing Home Workforce Standards Board meeting

**Date:** Thursday, Oct. 10, 2024

**Time:** 11 a.m.

**Location:** In person or via Webex

## Join the meeting

- In person: Come to the Washington Room, Department of Labor and Industry, 443 Lafayette Road N., St. Paul, MN.
- Via Webex: **Attendees and members of the public**, click [minnesota.webex.com/minnesota/j.php?MTID=m690df9f64a584d1fb63e0fcd68573fce](https://minnesota.webex.com/minnesota/j.php?MTID=m690df9f64a584d1fb63e0fcd68573fce), enter webinar access code **2480 135 0942** and enter webinar password **5428**. **Board members and speakers**, use the link provided in your meeting invitation.
- By telephone: Call 415-655-0003 or 855-282-6330, enter webinar access code **2480 135 0942** and enter webinar password **5428**.

## Call to order

1. **Roll call by secretary**
2. **Announcements and introductions**
  - Everyone present, both in person and remotely, can hear all discussions.
  - All votes will be taken by roll call if any member is attending remotely.
  - All handouts discussed and Webex instructions are posted on the board's webpage.
3. **Approval of meeting agenda**
4. **Approval of previous meeting minutes**
5. **Board updates and regular business**
  - Workgroup updates
    - Waivers and Variances Workgroup update
    - Public Hearing Workgroup update
    - Certification/Training Workgroup update
      - Next steps on curriculum
    - Data Workgroup update
  - Discuss comments
    - What themes does the board see?
    - Exhibit I – proposed findings and order adopting the rule, incorporating by reference a statement of support and rule overview
    - Costing
    - Exempt or non-exempt
  - Potential vote on any changes to draft rules
  - Potential vote on adopting the rules as drafted and approving the staff member to submit the necessary documents to the administrative law judge and the Office of Administrative Hearings, as

well as approve the staff member to respond to additional inquiries that would be necessary to effectuate that process

6. **New business**

- Annual report draft coming
- Board meeting schedule – whether to keep regular meetings on the second Thursday of the month

7. **Next meeting**

## **Adjournment**

### **Green meeting practices**

The state of Minnesota is committed to minimizing in-person environmental impacts by following green meeting practices. The Department of Labor and Industry (DLI) is minimizing the environmental impact of its events by following green meeting practices. DLI encourages you to use electronic copies of handouts or to print them on 100% post-consumer processed chlorine-free paper, double-sided.



Docket No.— 28-9001-40213

# Exhibit K5—NHWSB questionnaire for current nursing home workers

# NHWSB questionnaire for current nursing home workers

Wednesday, March 13, 2024

**101**

Total Responses

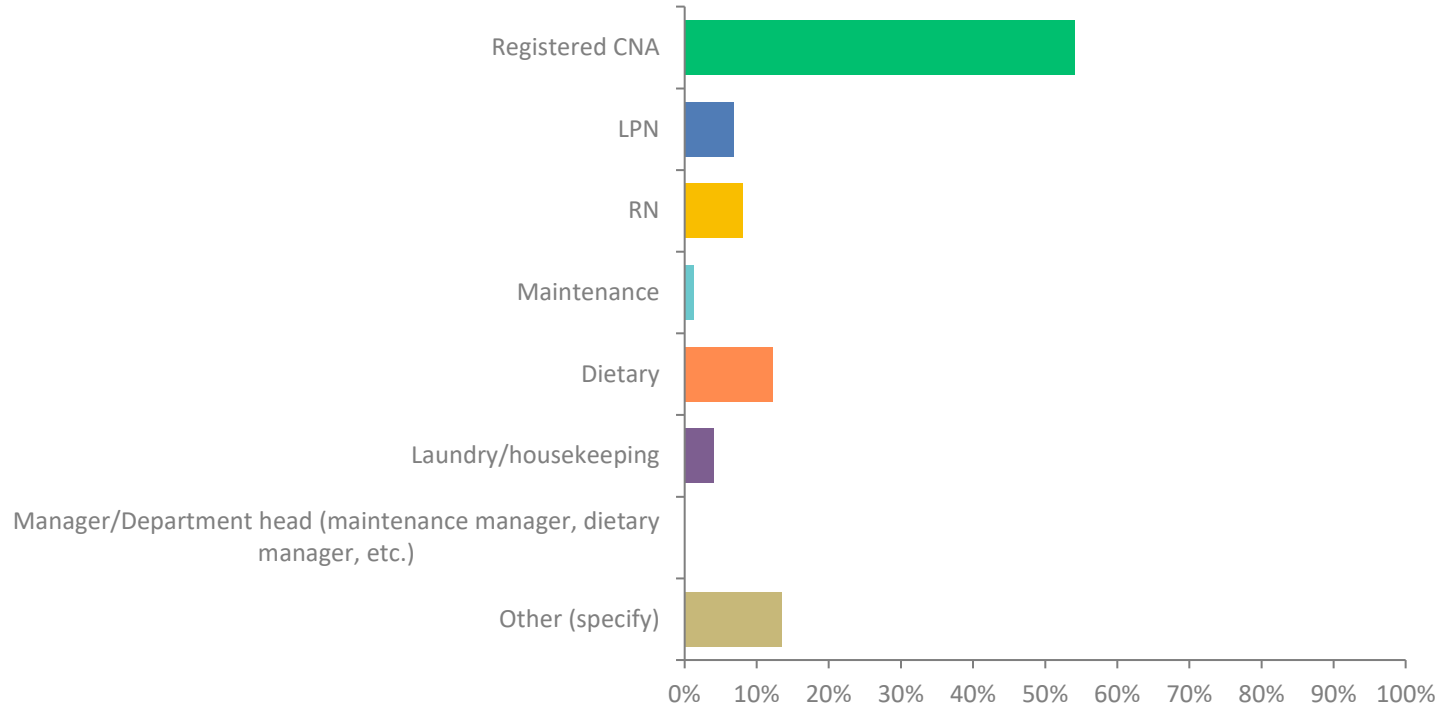
Date Created: Monday, November 13, 2023

Complete Responses: 101

# Q1: What is your role at the nursing home?

000296

Answered: 74 Skipped: 0



# Q1: What is your role at the nursing home?

000297

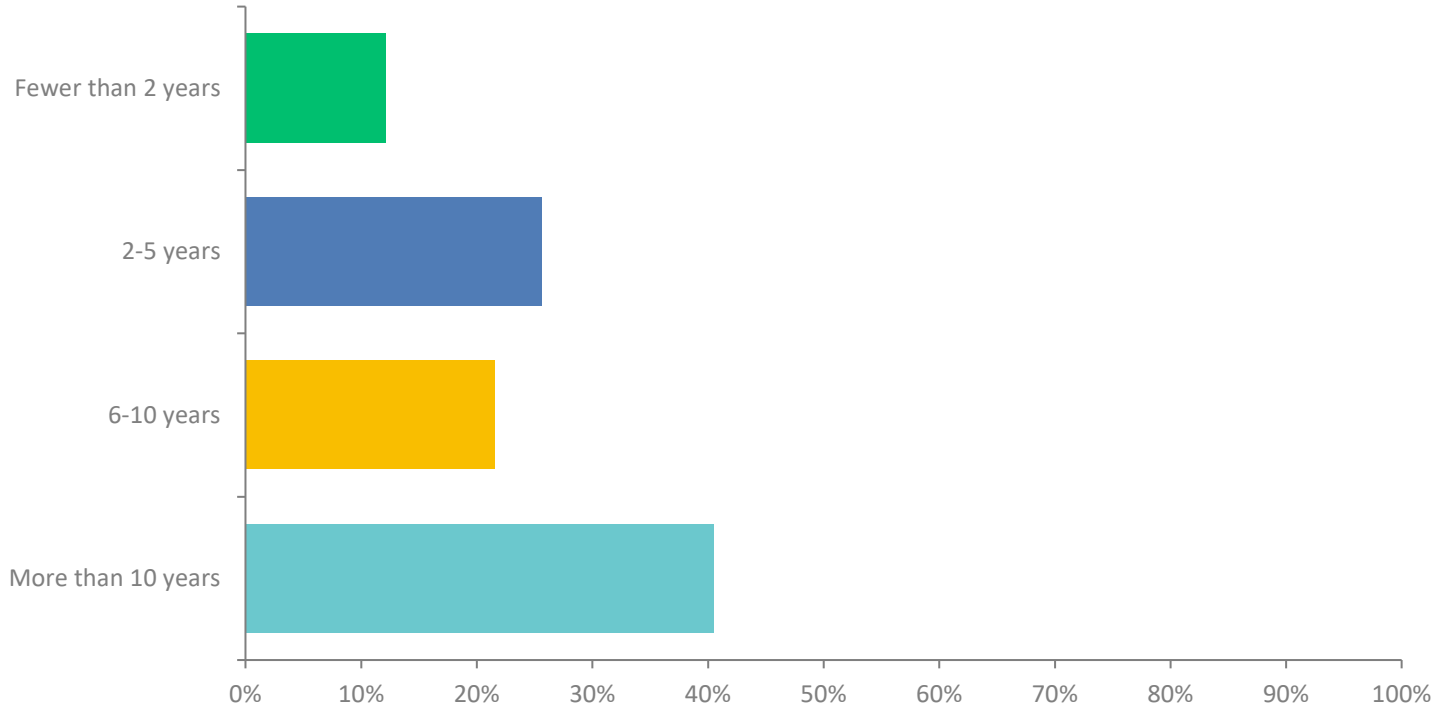
Answered: 74 Skipped: 0

ANSWER CHOICES	RESPONSES	
Registered CNA	54.05%	40
LPN	6.76%	5
RN	8.11%	6
Maintenance	1.35%	1
Dietary	12.16%	9
Laundry/housekeeping	4.05%	3
Manager/Department head (maintenance manager, dietary manager, etc.)	0%	0
Other (specify)	13.51%	10

## Q2: How long have you worked in long-term care?

000298

Answered: 74 Skipped: 0



## Q2: How long have you worked in long-term care?

000299

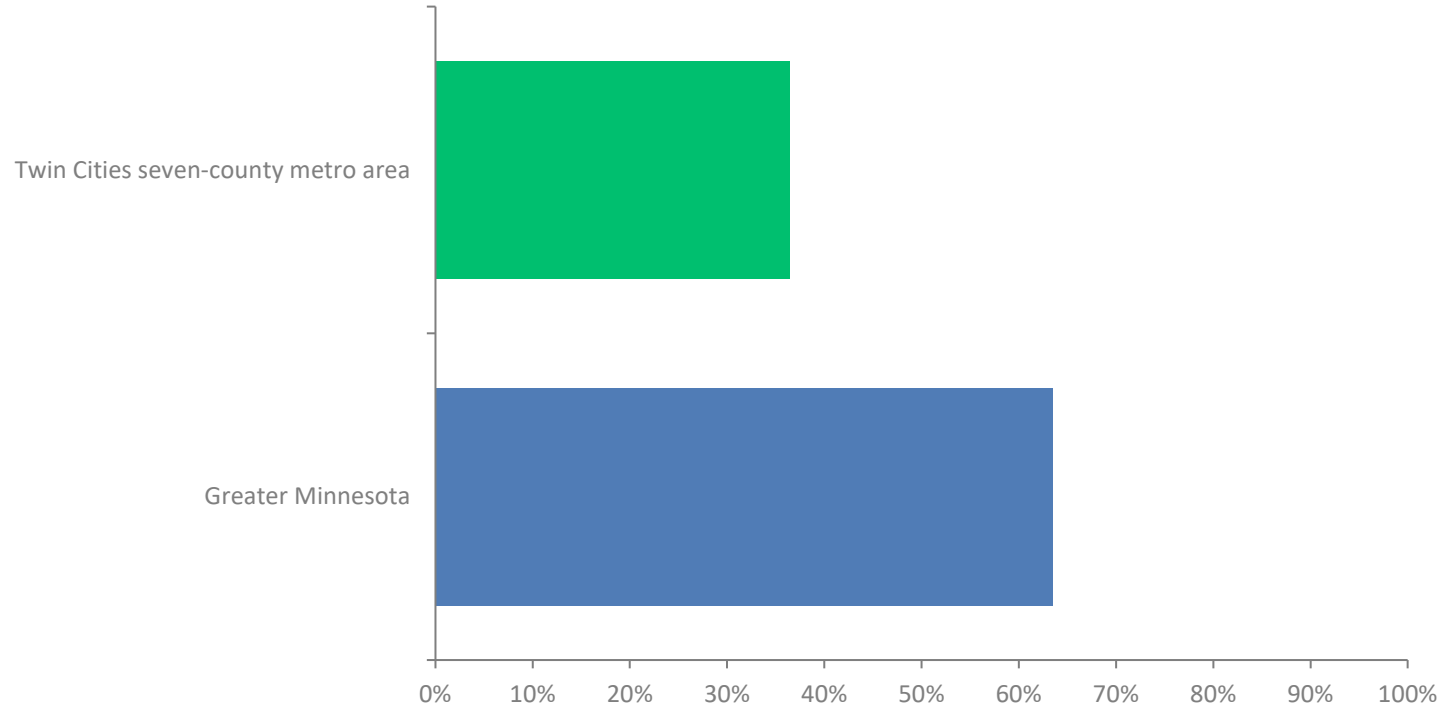
Answered: 74 Skipped: 0

ANSWER CHOICES	RESPONSES	
Fewer than 2 years	12.16%	9
2-5 years	25.68%	19
6-10 years	21.62%	16
More than 10 years	40.54%	30
TOTAL		74

# Q3: Where is your nursing home located?

000300

Answered: 74 Skipped: 0





### Q3: Where is your nursing home located?

000301

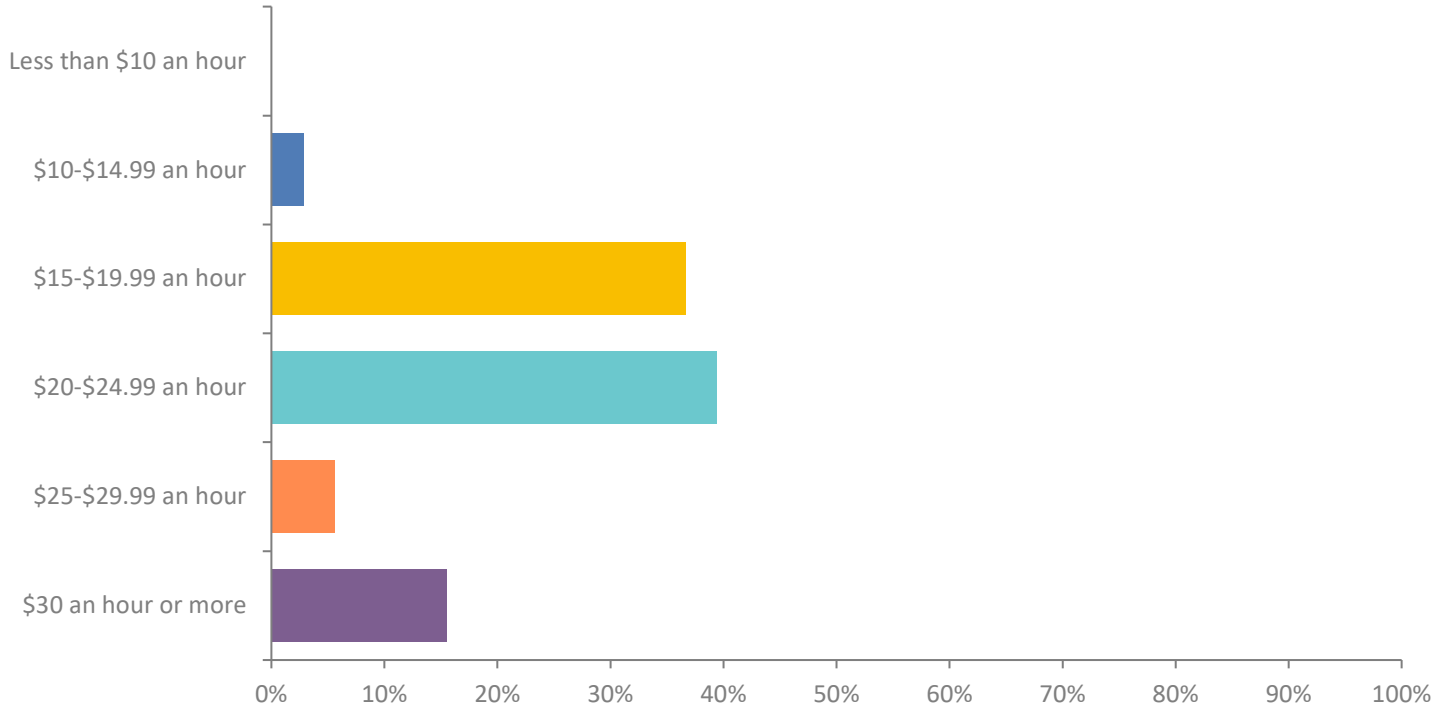
Answered: 74 Skipped: 0

ANSWER CHOICES	RESPONSES	
Twin Cities seven-county metro area	36.49%	27
Greater Minnesota	63.51%	47
<b>TOTAL</b>		<b>74</b>

# Q4: What is your base hourly wage at this nursing facility?

000302

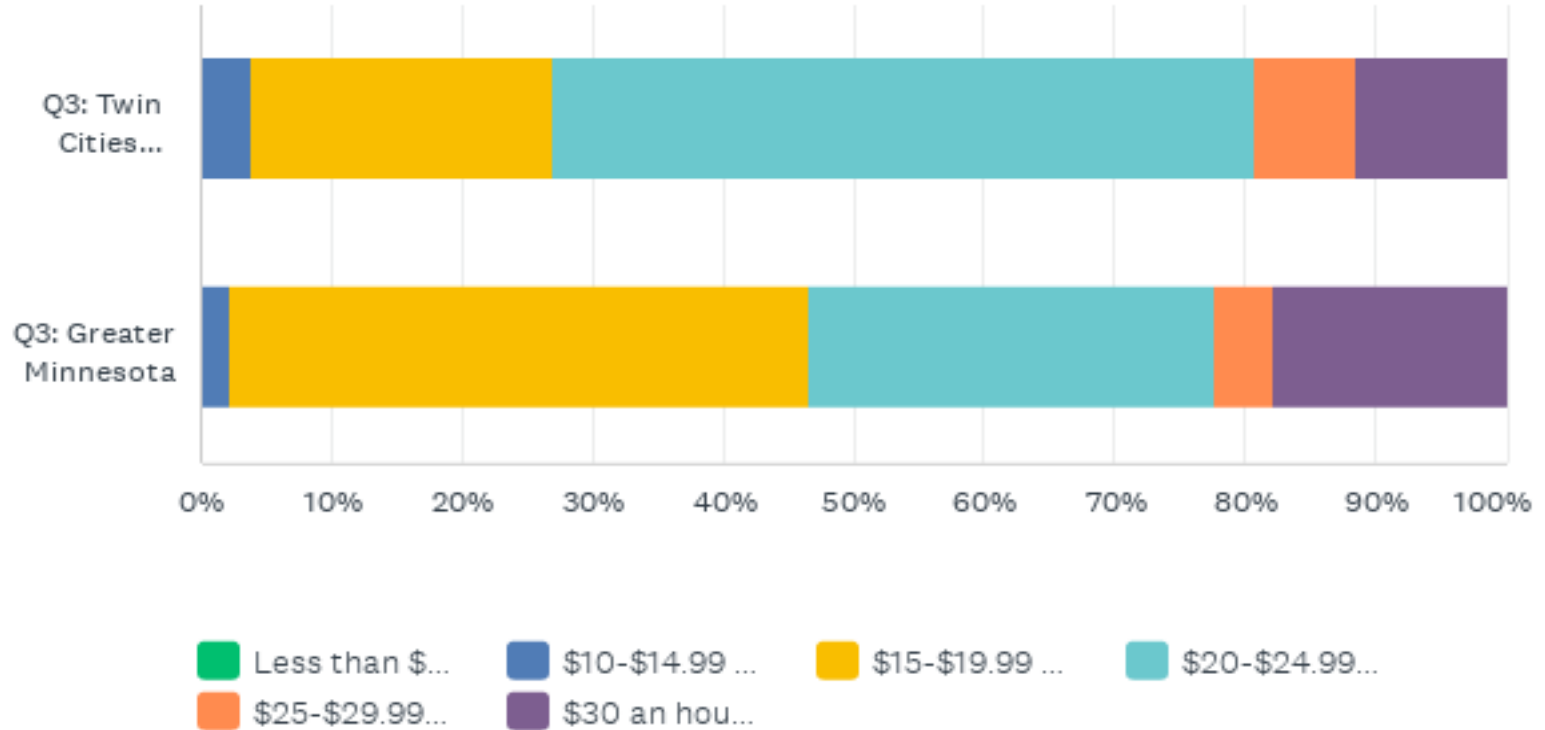
Answered: 71 Skipped: 3



# Q4: What is your base hourly wage at this nursing facility?

000303

Answered: 71 Skipped: 3



## Q4: What is your base hourly wage at this nursing facility?

000304

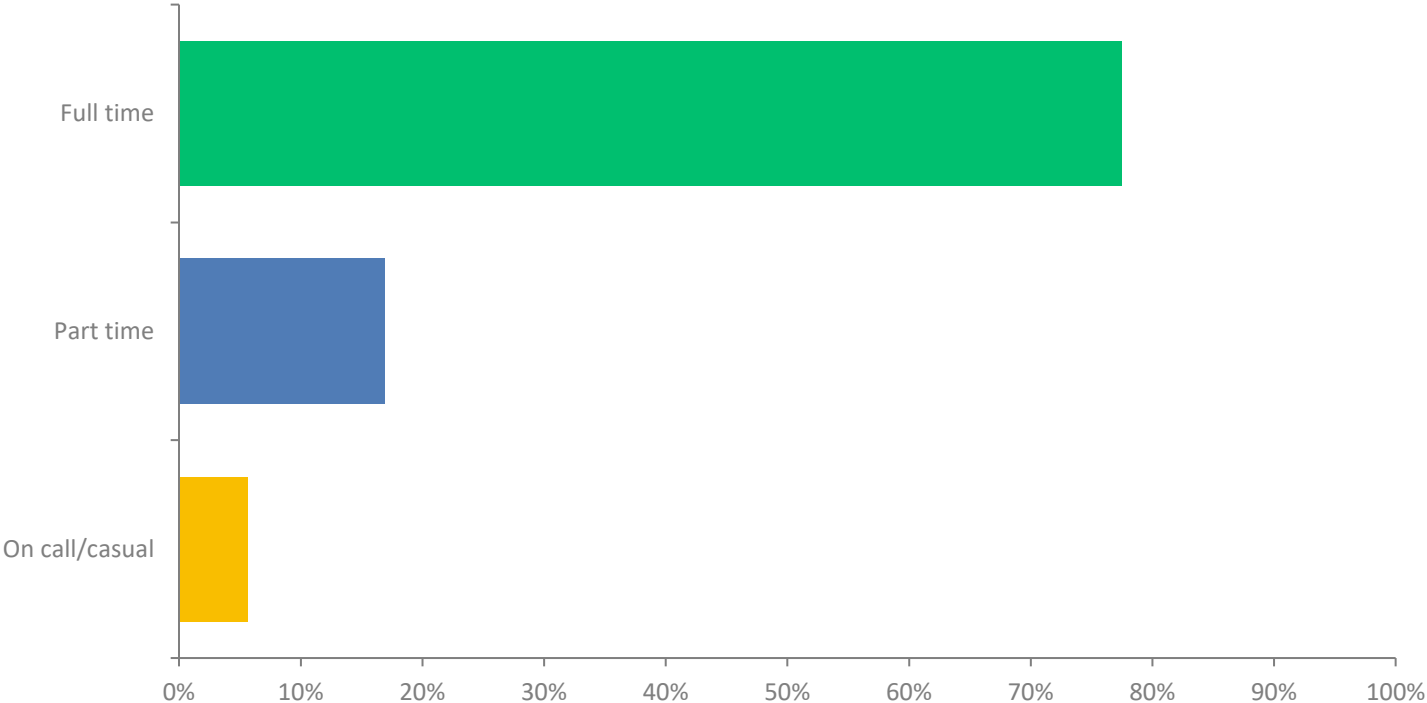
Answered: 71 Skipped: 3

ANSWER CHOICES	RESPONSES	
Less than \$10 an hour	0%	0
\$10-\$14.99 an hour	2.82%	2
\$15-\$19.99 an hour	36.62%	26
\$20-\$24.99 an hour	39.44%	28
\$25-\$29.99 an hour	5.63%	4
\$30 an hour or more	15.49%	11
<b>TOTAL</b>		<b>71</b>

# Q5: Does your employer consider you a full-time, a part-time or an on call/casual employee?

000305

Answered: 71 Skipped: 3



# Q5: Does your employer consider you a full-time, a part-time or an on call/casual employee?

000306

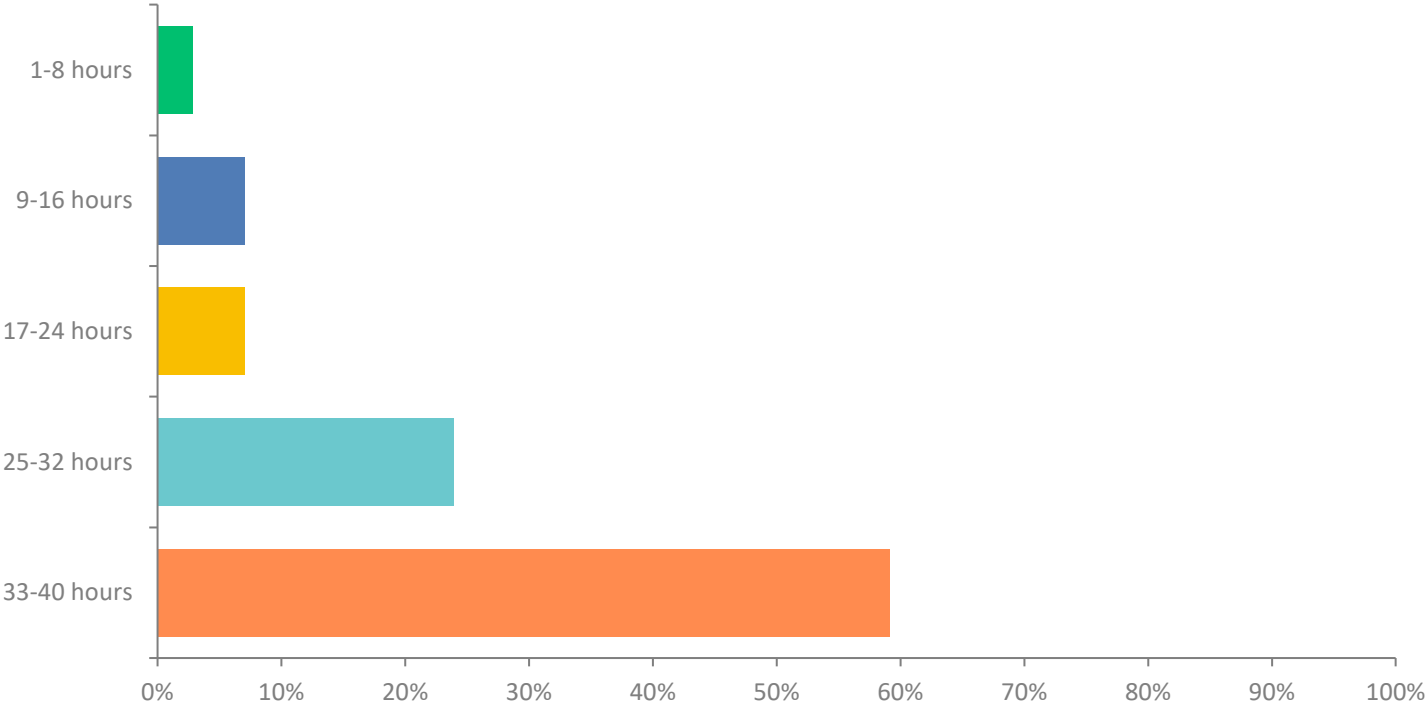
Answered: 71 Skipped: 3

ANSWER CHOICES	RESPONSES	
Full time	77.46%	55
Part time	16.90%	12
On call/casual	5.63%	4
TOTAL		71

# Q6: How many hours do you work in a typical week at this nursing facility not including overtime?

000307

Answered: 71 Skipped: 3



## Q6: How many hours do you work in a typical week at this nursing facility not including overtime?

000308

Answered: 71 Skipped: 3

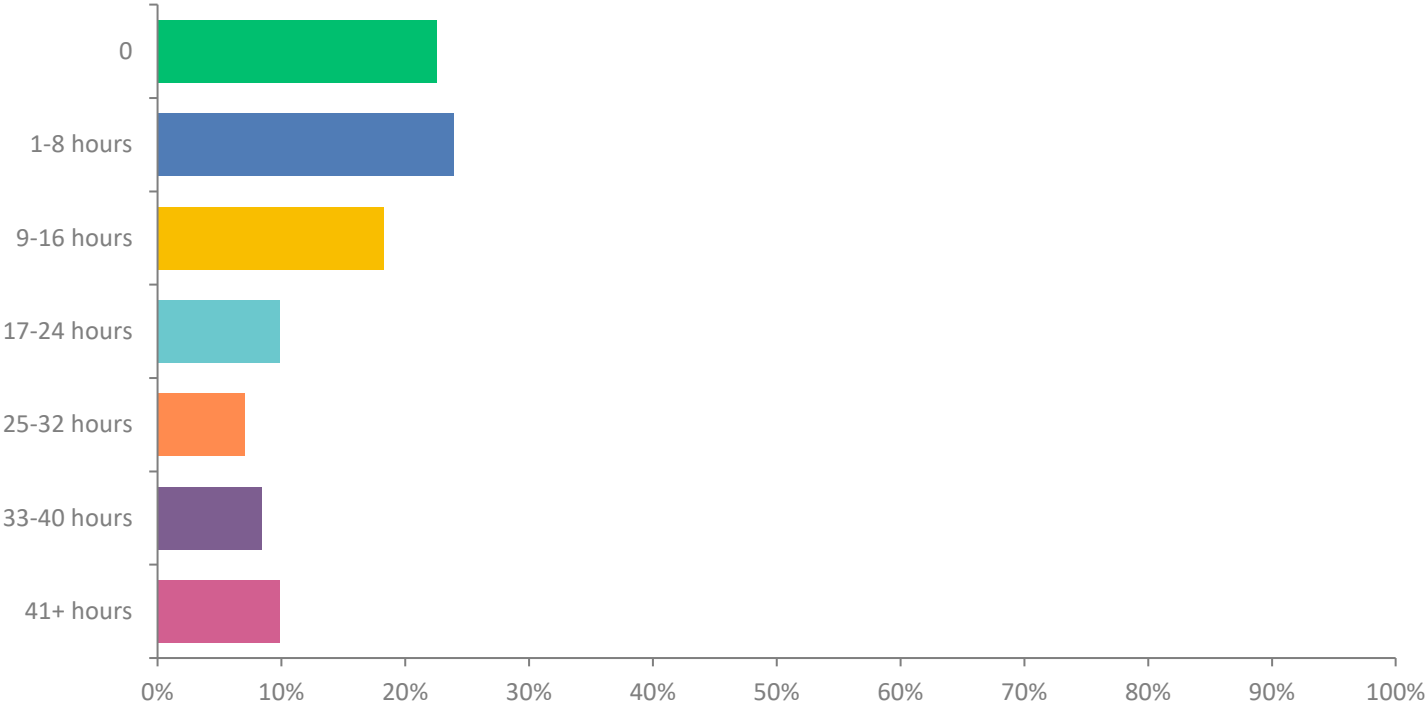
ANSWER CHOICES	RESPONSES	
1-8 hours	2.82%	2
9-16 hours	7.04%	5
17-24 hours	7.04%	5
25-32 hours	23.94%	17
33-40 hours	59.15%	42
TOTAL		71



# Q7: In the previous month, estimate how many hours of paid overtime you worked at this nursing facility:

000309

Answered: 71 Skipped: 3



# Q7: In the previous month, estimate how many hours of paid overtime you worked at this nursing facility:

000310

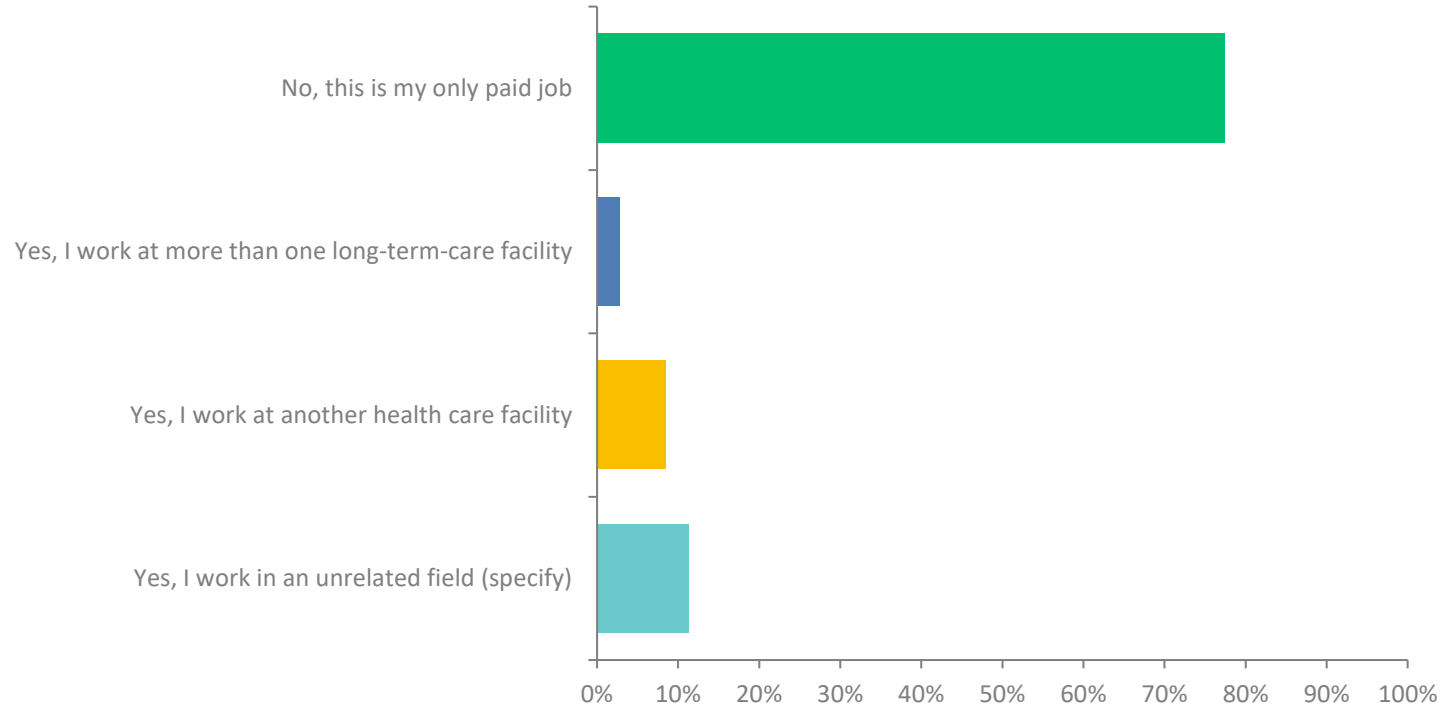
Answered: 71 Skipped: 3

ANSWER CHOICES	RESPONSES	
0	22.54%	16
1-8 hours	23.94%	17
9-16 hours	18.31%	13
17-24 hours	9.86%	7
25-32 hours	7.04%	5
33-40 hours	8.45%	6
41+ hours	9.86%	7
TOTAL		71

# Q8: Do you have a second job?

000311

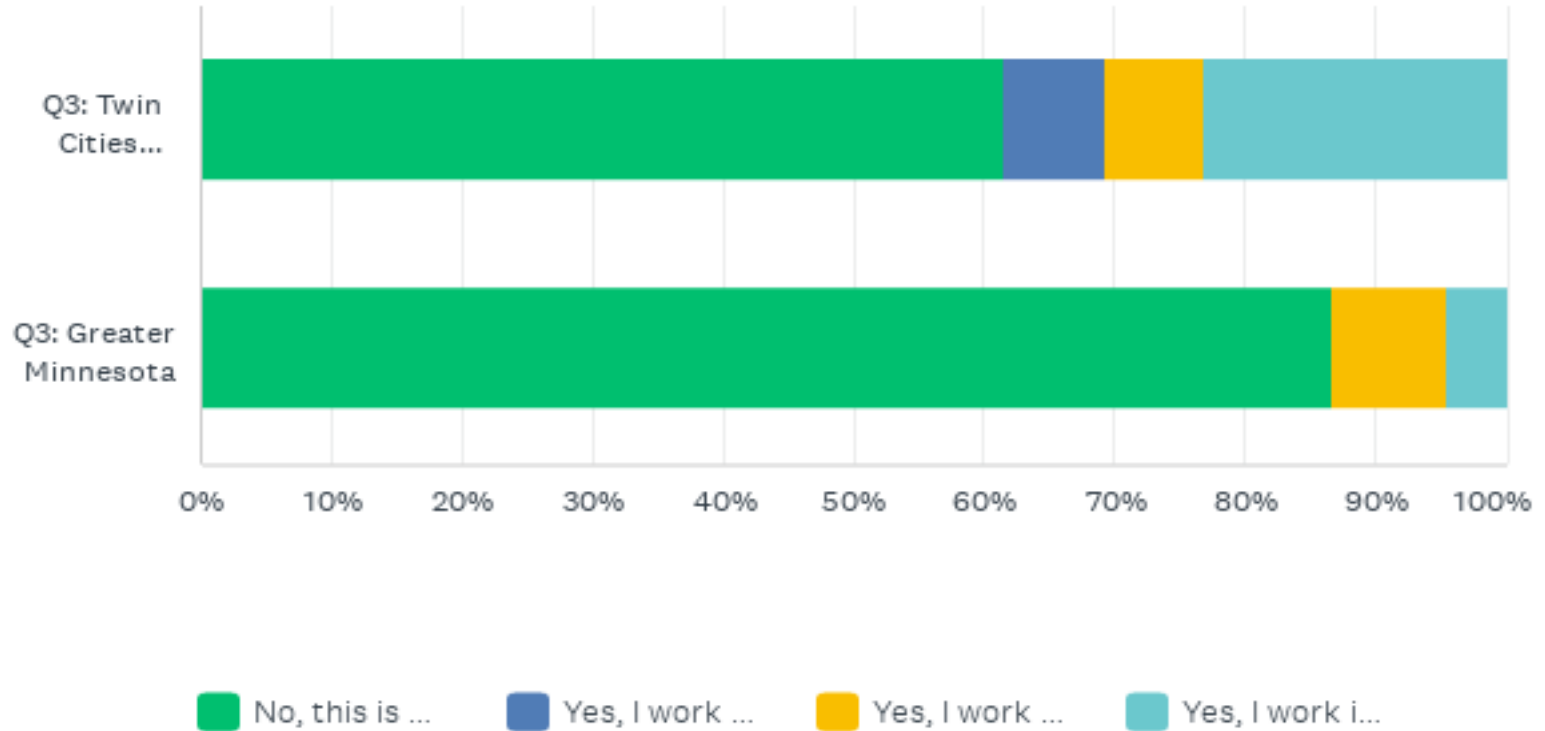
Answered: 71 Skipped: 3



# Q8: Do you have a second job?

000312

Answered: 71 Skipped: 3



## Q8: Do you have a second job?

000313

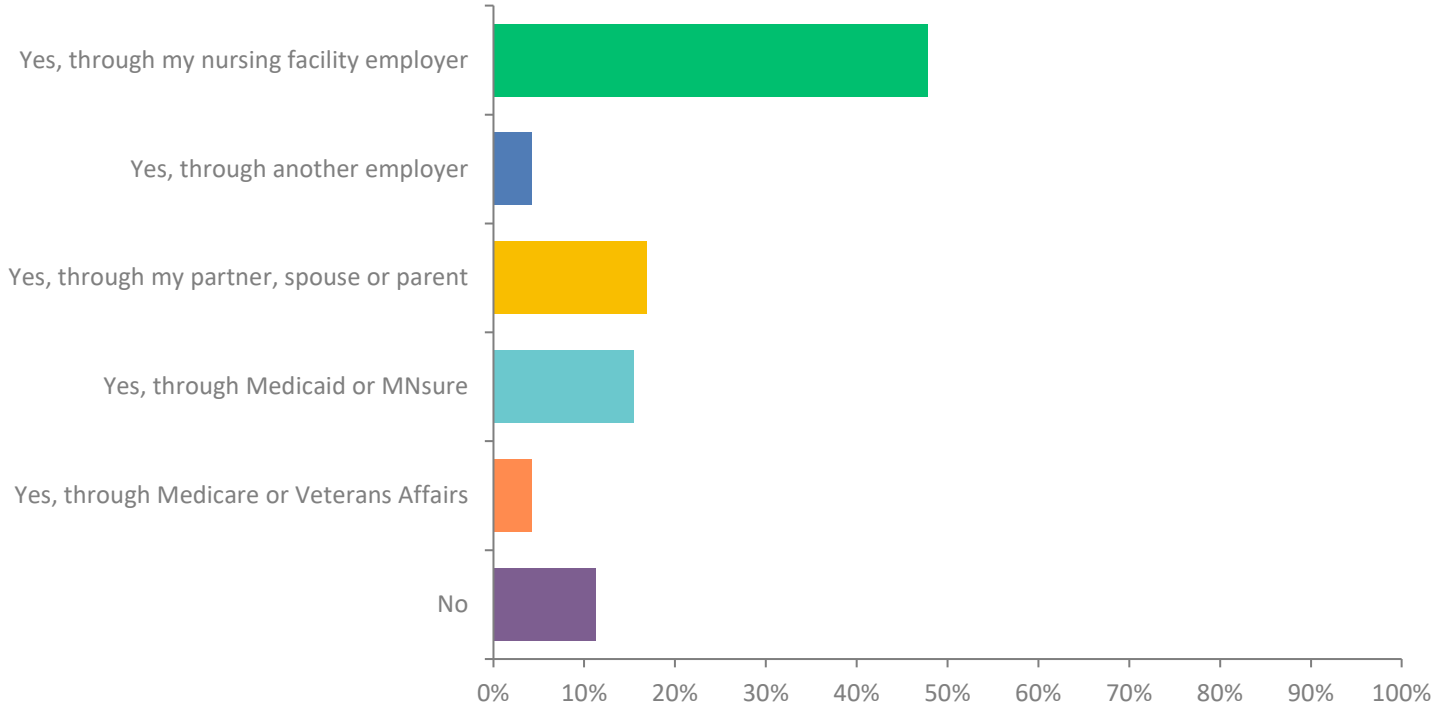
Answered: 71 Skipped: 3

ANSWER CHOICES	RESPONSES	
No, this is my only paid job	77.46%	55
Yes, I work at more than one long-term-care facility	2.82%	2
Yes, I work at another health care facility	8.45%	6
Yes, I work in an unrelated field (specify)	11.27%	8
<b>TOTAL</b>		<b>71</b>

# Q9: Do you have health insurance?

000314

Answered: 71 Skipped: 3



# Q9: Do you have health insurance?

000315

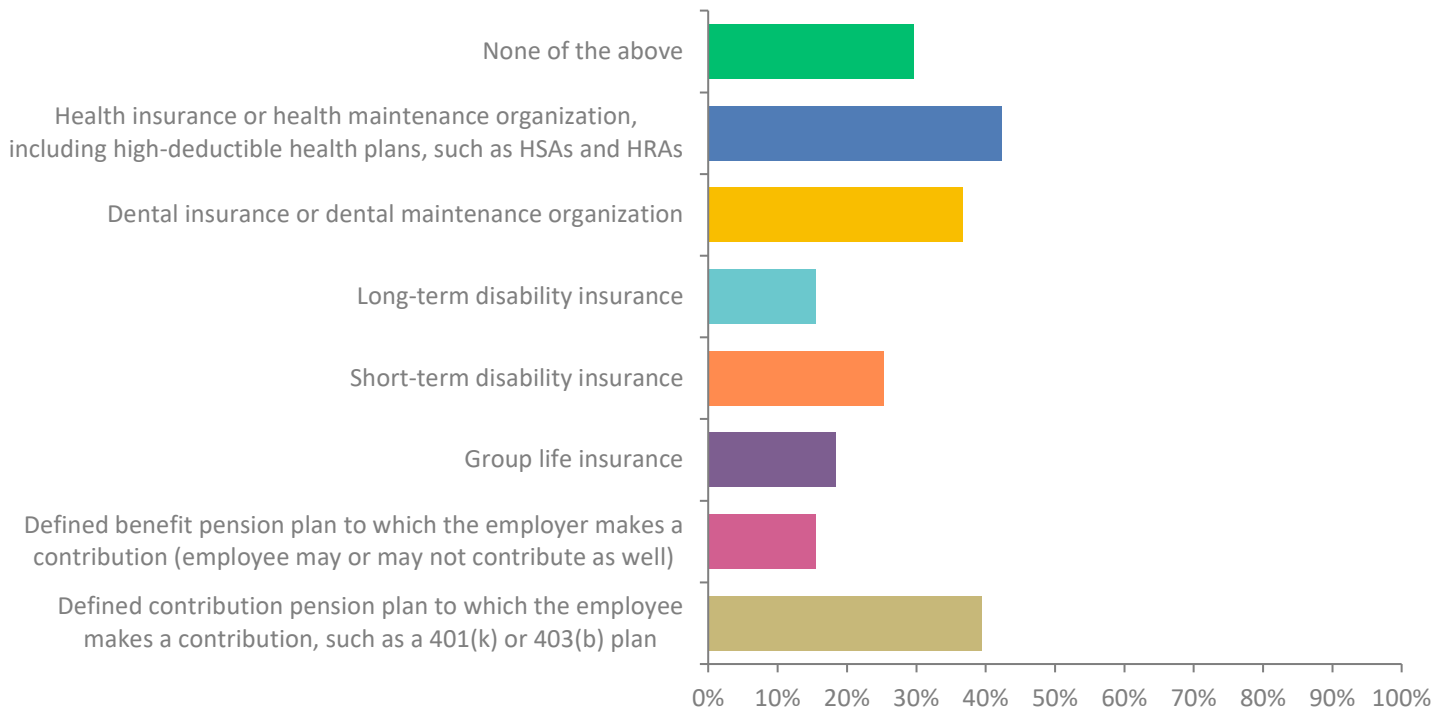
Answered: 71 Skipped: 3

ANSWER CHOICES	RESPONSES	
Yes, through my nursing facility employer	47.89%	34
Yes, through another employer	4.23%	3
Yes, through my partner, spouse or parent	16.90%	12
Yes, through Medicaid or MNsure	15.49%	11
Yes, through Medicare or Veterans Affairs	4.23%	3
No	11.27%	8
<b>TOTAL</b>		<b>71</b>

# Q10: Are you enrolled in the following benefits by your nursing facility employer? (Select all that apply.)

000316

Answered: 71 Skipped: 3

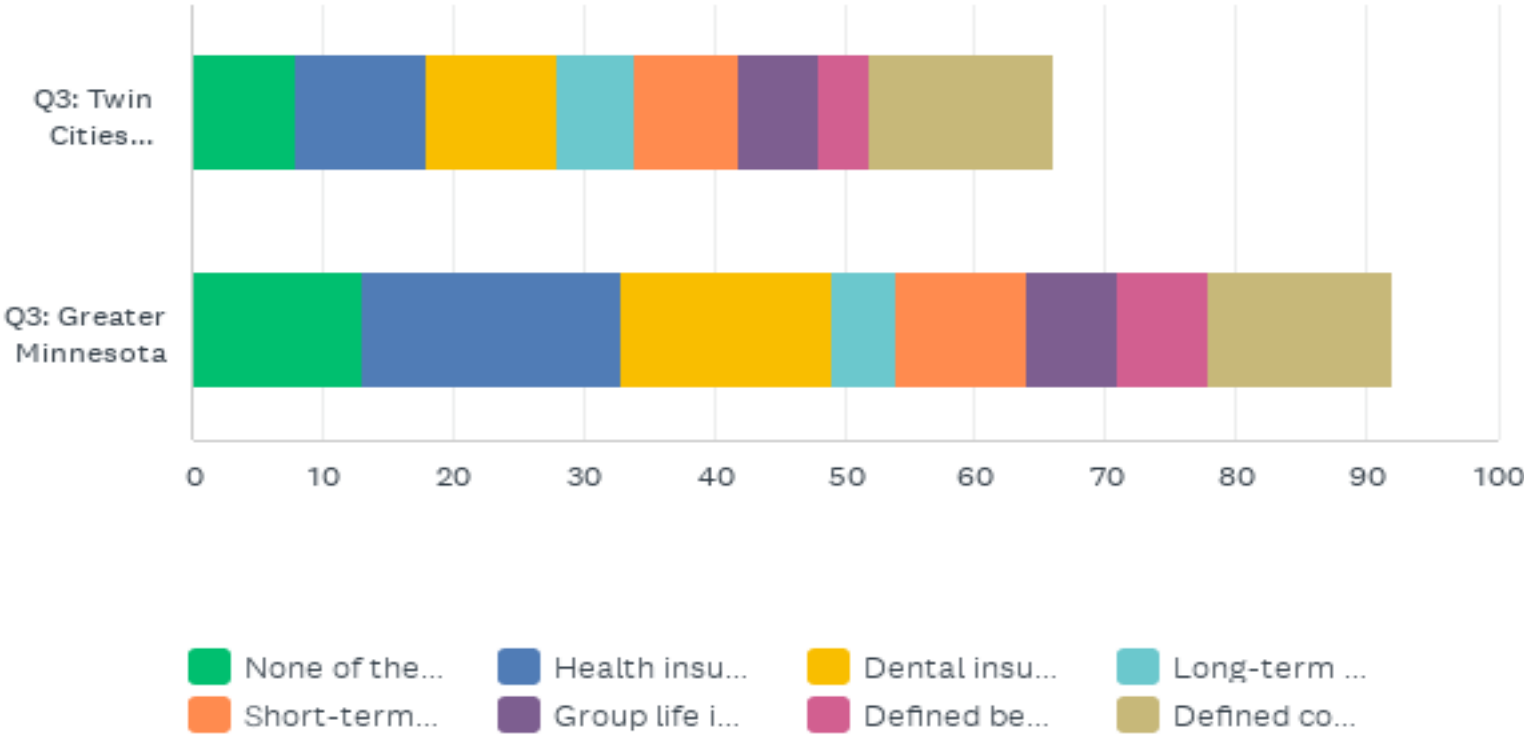




# Q10: Are you enrolled in the following benefits by your nursing facility employer? (Select all that apply.)

000317

Answered: 71 Skipped: 3



# Q10: Are you enrolled in the following benefits by your nursing facility employer? (Select all that apply.)

000318

Answered: 71 Skipped: 3

	NONE OF THE ABOVE	HEALTH INSURANCE OR HEALTH MAINTENANCE ORGANIZATION, INCLUDING HIGH-DEDUCTIBLE HEALTH PLANS, SUCH AS HSAS AND HRAS	DENTAL INSURANCE OR DENTAL MAINTENANCE ORGANIZATION	LONG-TERM DISABILITY INSURANCE	SHORT-TERM DISABILITY INSURANCE	GROUP LIFE INSURANCE	DEFINED BENEFIT PENSION PLAN TO WHICH THE EMPLOYER MAKES A CONTRIBUTION (EMPLOYEE MAY OR MAY NOT CONTRIBUTE AS WELL)	DEFINED CONTRIBUTION PENSION PLAN TO WHICH THE EMPLOYEE MAKES A CONTRIBUTION, SUCH AS A 401(K) OR 403(B) PLAN	TOTAL
Q3: Twin Cities seven-county metro area	30.77% 8	38.46% 10	38.46% 10	23.08% 6	30.77% 8	23.08% 6	15.38% 4	53.85% 14	92.9
Q3: Greater Minnesota	28.89% 13	44.44% 20	35.56% 16	11.11% 5	22.22% 10	15.56% 7	15.56% 7	31.11% 14	129.5
Total Respondents	21	30	26	11	18	13	11	28	

# Q10: Are you enrolled in the following benefits by your nursing facility employer? (Select all that apply.)

000319

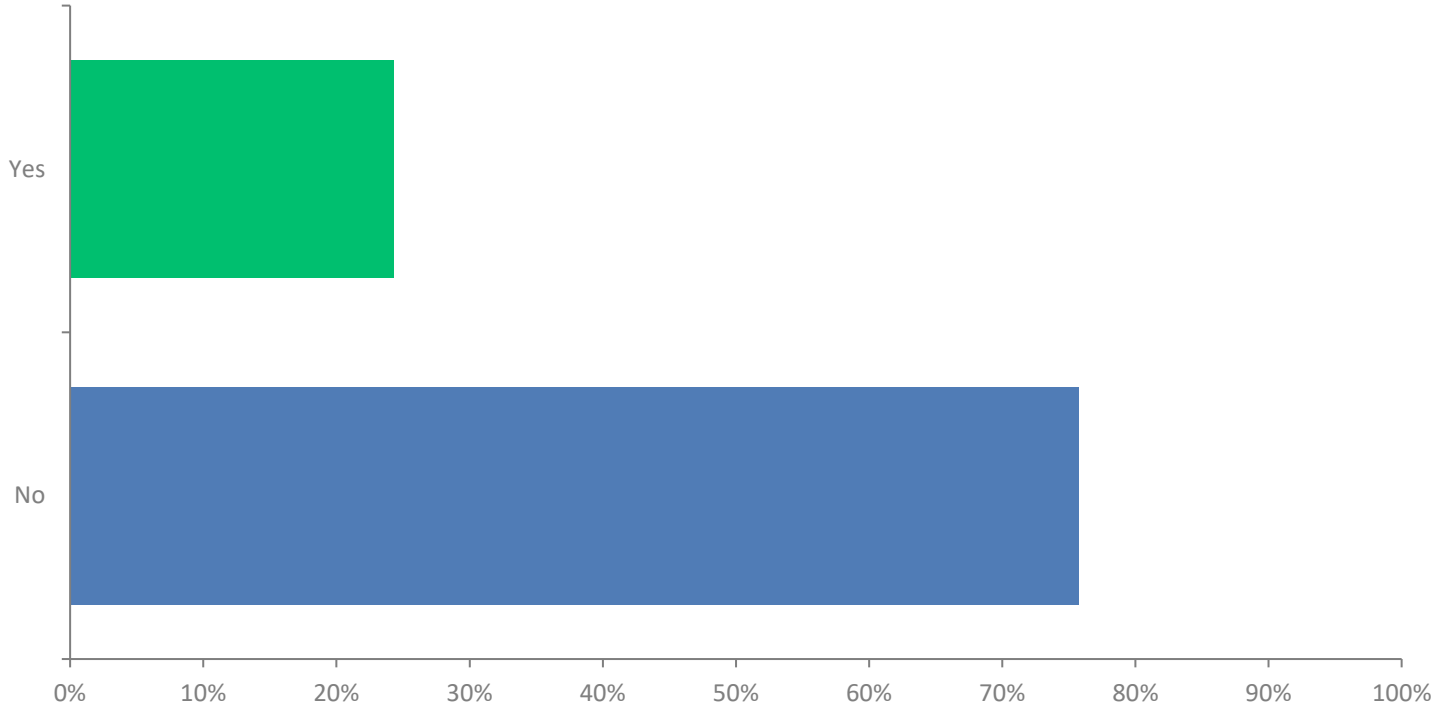
Answered: 71 Skipped: 3

ANSWER CHOICES	RESPONSES	
None of the above	29.58%	21
Health insurance or health maintenance organization, including high-deductible health plans, such as HSAs and HRAs	42.25%	30
Dental insurance or dental maintenance organization	36.62%	26
Long-term disability insurance	15.49%	11
Short-term disability insurance	25.35%	18
Group life insurance	18.31%	13
Defined benefit pension plan to which the employer makes a contribution (employee may or may not contribute as well)	15.49%	11

# Q11: Do you have children who need care while you work?

000320

Answered: 70 Skipped: 4



# Q11: Do you have children who need care while you work?

000321

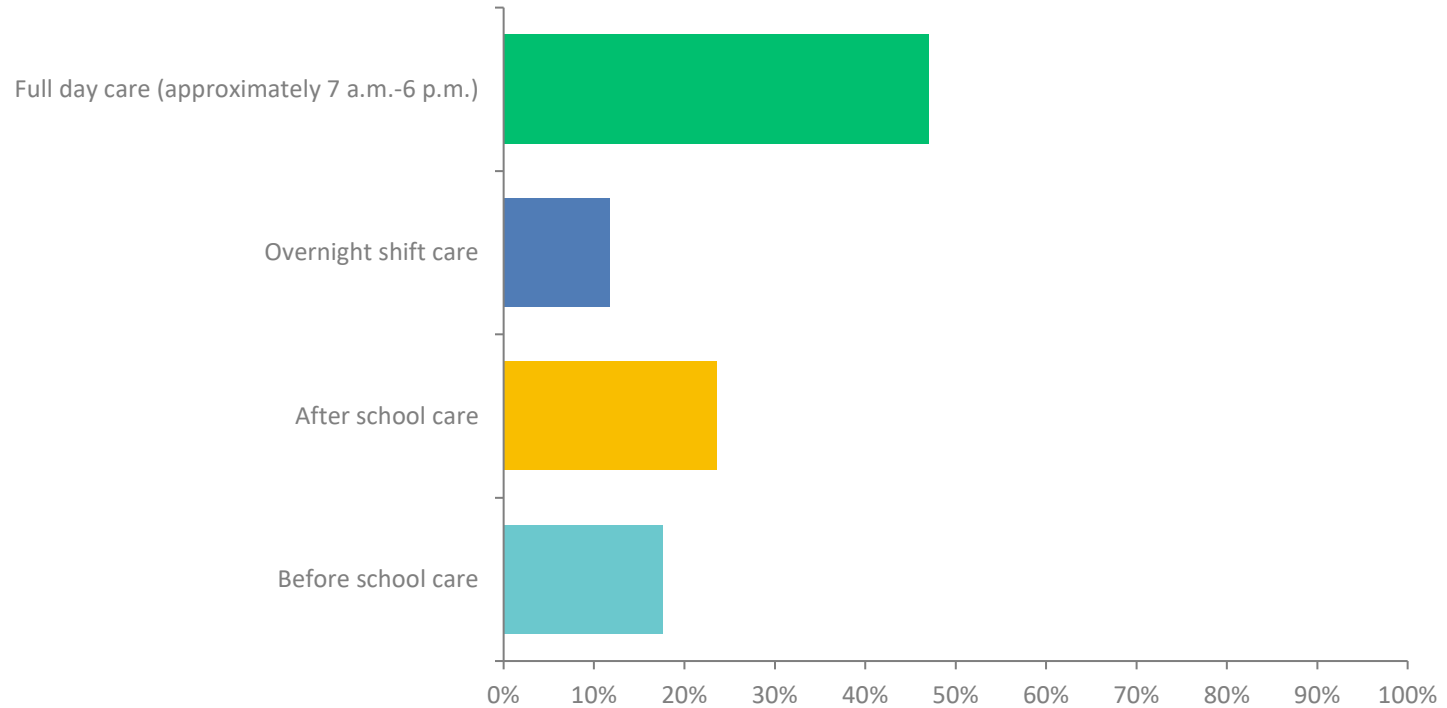
Answered: 70 Skipped: 4

ANSWER CHOICES	RESPONSES	
Yes	24.29%	17
No	75.71%	53
TOTAL		70

# Q12: What kind of care do your children need?

000322

Answered: 17 Skipped: 57



## Q12: What kind of care do your children need?

000323

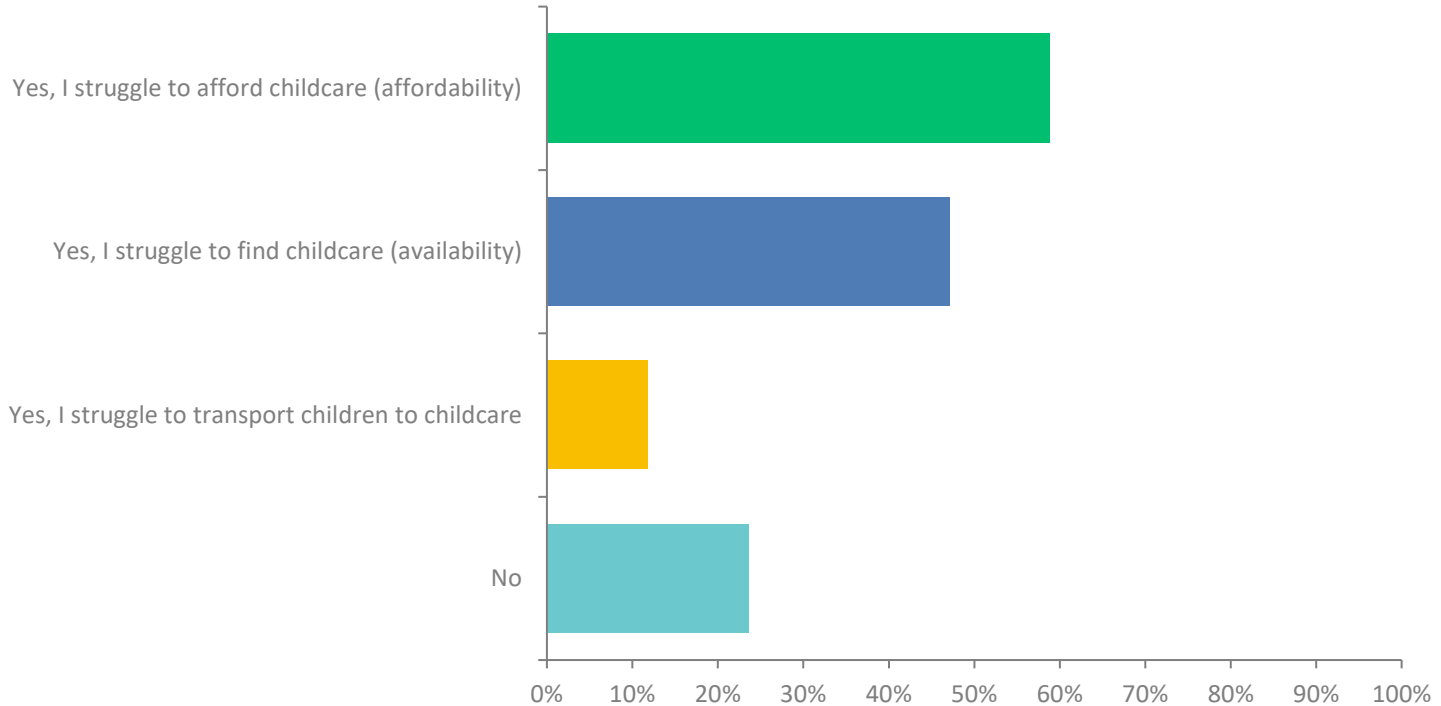
Answered: 17 Skipped: 57

ANSWER CHOICES	RESPONSES	
Full day care (approximately 7 a.m.-6 p.m.)	47.06%	8
Overnight shift care	11.76%	2
After school care	23.53%	4
Before school care	17.65%	3
<b>TOTAL</b>		<b>17</b>

# Q13: Do you struggle to find and pay for that childcare? (Select all that apply.)

000324

Answered: 17 Skipped: 57





### Q13: Do you struggle to find and pay for that childcare? (Select all that apply.)

000325

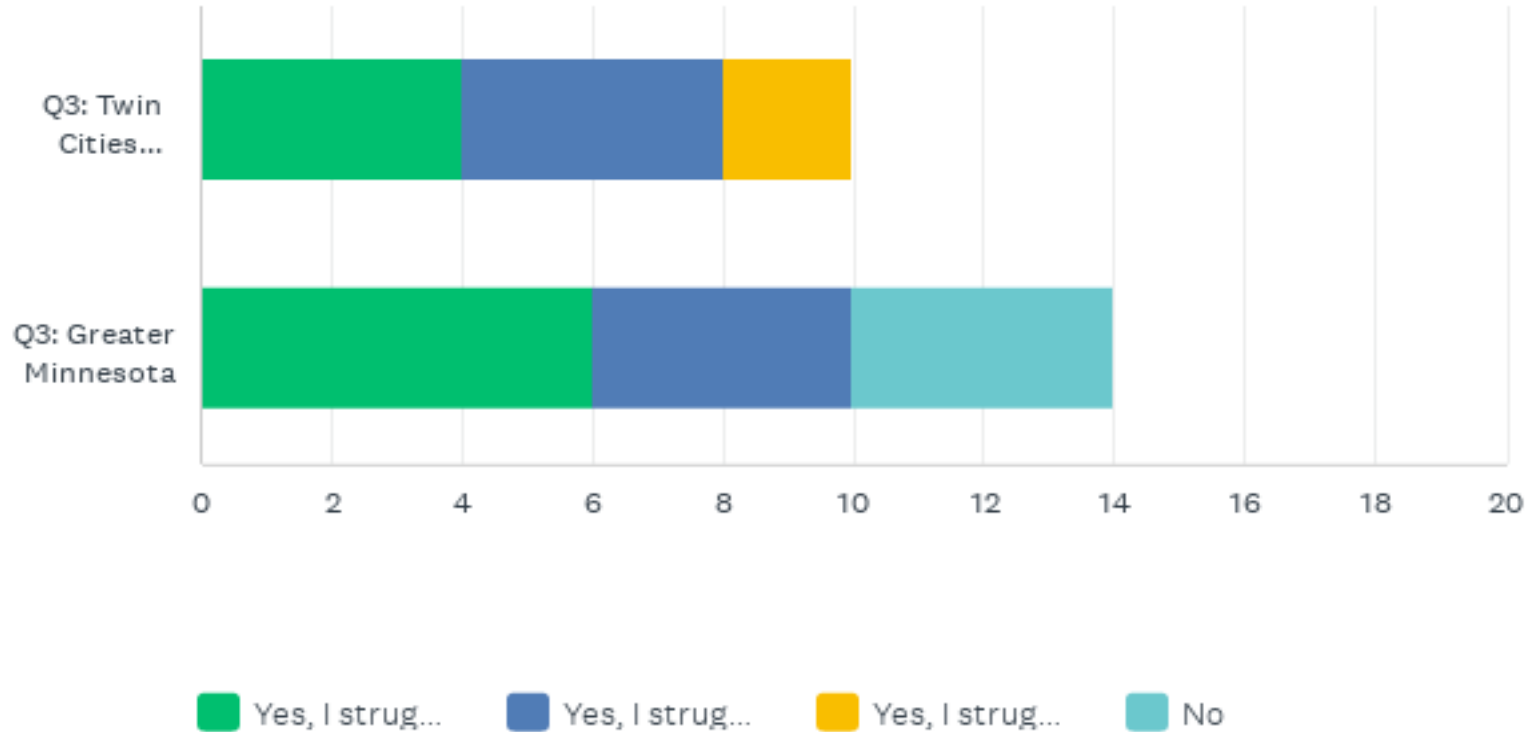
Answered: 17 Skipped: 57

ANSWER CHOICES	RESPONSES	
Yes, I struggle to afford childcare (affordability)	58.82%	10
Yes, I struggle to find childcare (availability)	47.06%	8
Yes, I struggle to transport children to childcare	11.76%	2
No	23.53%	4
TOTAL		24

# Q13: Do you struggle to find and pay for that childcare? (Select all that apply.)

000326

Answered: 17 Skipped: 57



### Q13: Do you struggle to find and pay for that childcare? (Select all that apply.)

000327

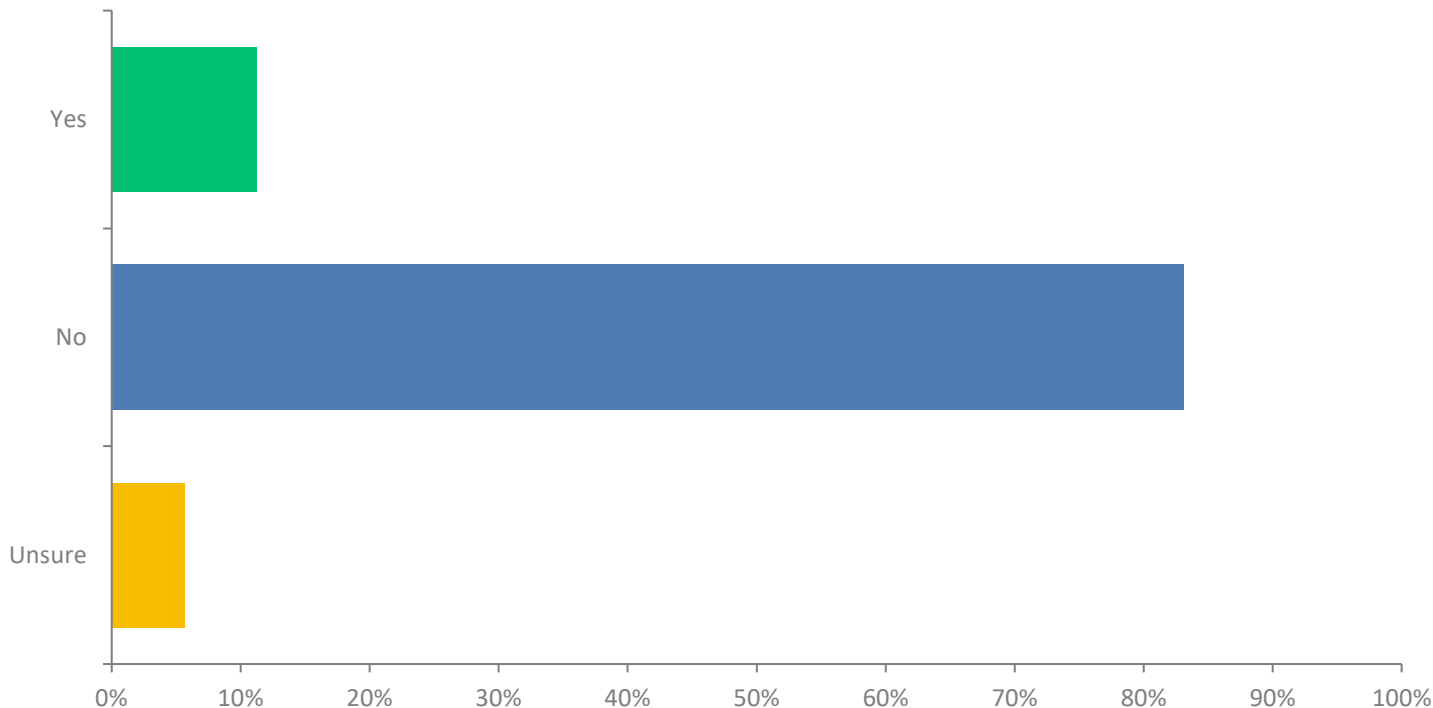
Answered: 17 Skipped: 57

	YES, I STRUGGLE TO AFFORD CHILDCARE (AFFORDABILITY)	YES, I STRUGGLE TO FIND CHILDCARE (AVAILABILITY)	YES, I STRUGGLE TO TRANSPORT CHILDREN TO CHILDCARE	NO	TOTAL
Q3: Twin Cities seven-county metro area	66.67% 4	66.67% 4	33.33% 2	0.00% 0	58.82% 10
Q3: Greater Minnesota	54.55% 6	36.36% 4	0.00% 0	36.36% 4	82.35% 14
Total Respondents	10	8	2	4	17

# Q14: In the past year, have you refused extra hours because it may cause you to exceed an income cap on public benefits like SNAP, childcare assistance, housing support/section 8 voucher, etc.?

000328

Answered: 71 Skipped: 3



# Q14: In the past year, have you refused extra hours because it may cause you to exceed an income cap on public benefits like SNAP, childcare assistance, housing support/section 8 voucher, etc.?

000329

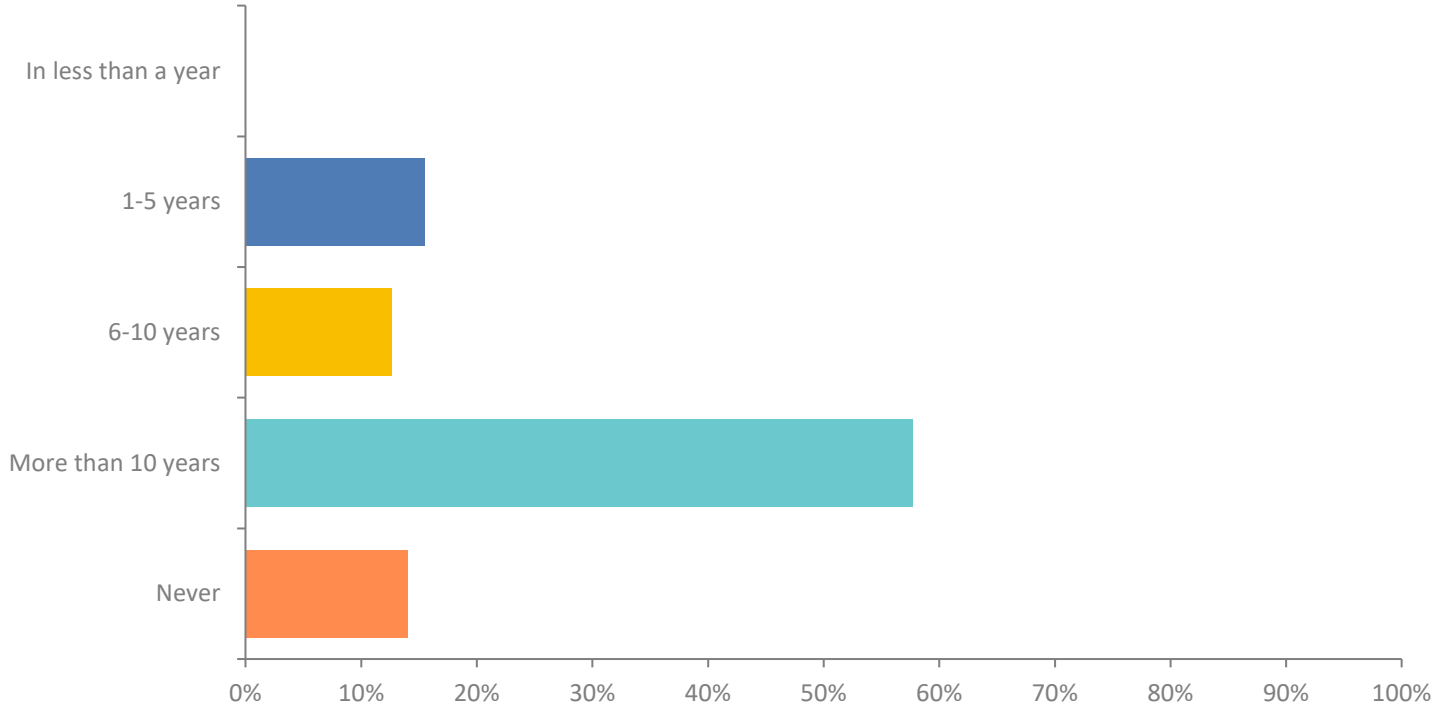
Answered: 71 Skipped: 3

ANSWER CHOICES	RESPONSES	
Yes	11.27%	8
No	83.10%	59
Unsure	5.63%	4
TOTAL		71

# Q15: When do you plan on retiring?

000330

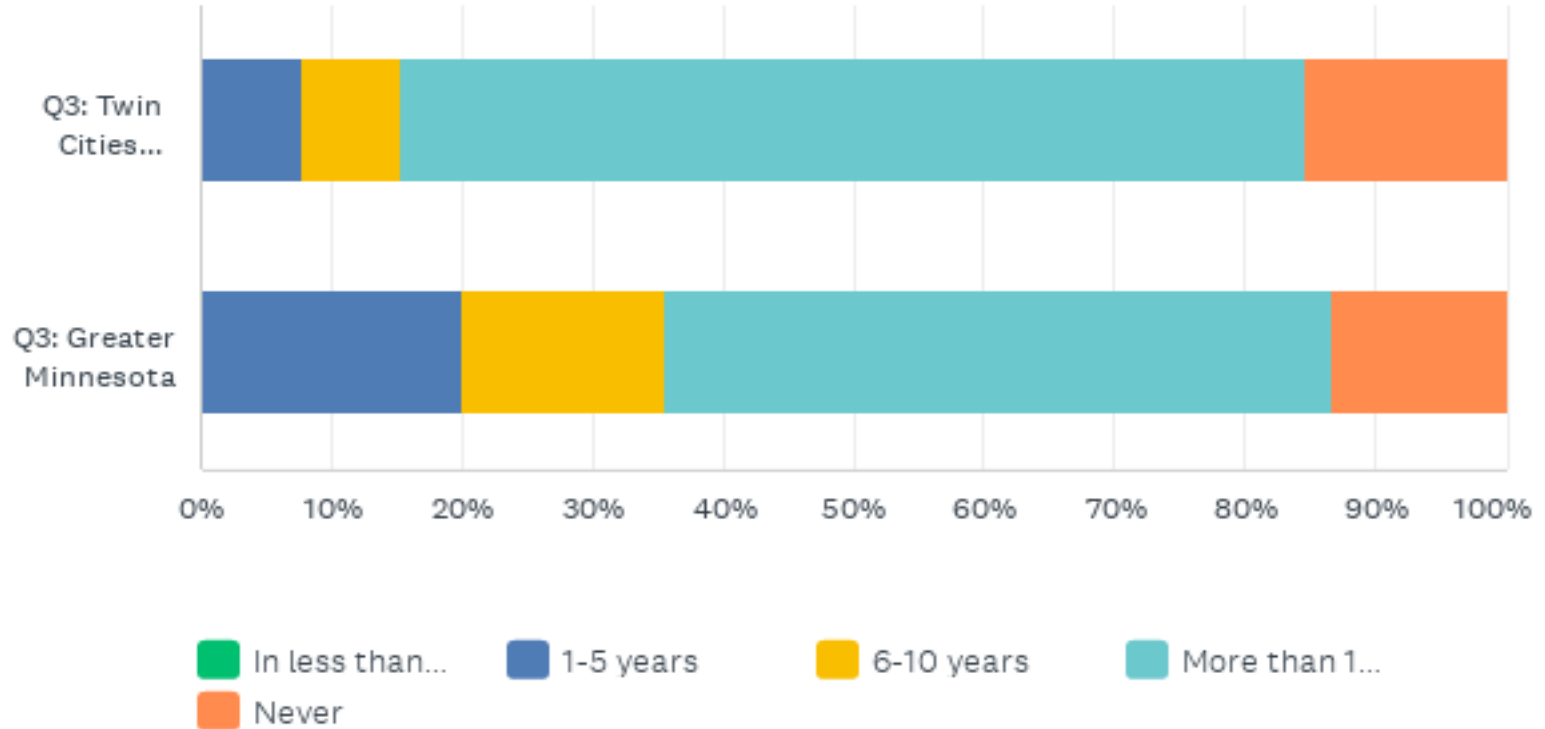
Answered: 71 Skipped: 3



# Q15: When do you plan on retiring?

000331

Answered: 71 Skipped: 3



# Q15: When do you plan on retiring?

000332

Answered: 71 Skipped: 3

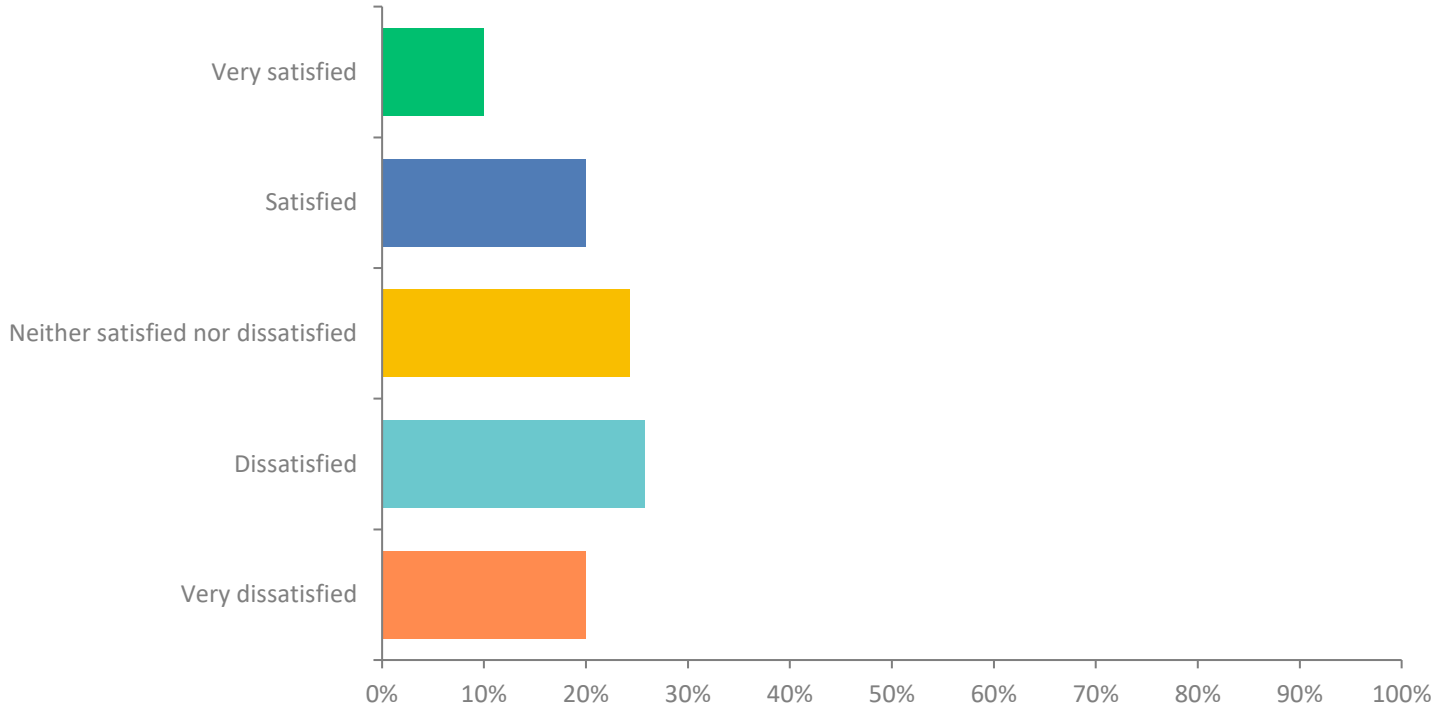
ANSWER CHOICES	RESPONSES	
In less than a year	0%	0
1-5 years	15.49%	11
6-10 years	12.68%	9
More than 10 years	57.75%	41
Never	14.08%	10
TOTAL		71



# Q16: How satisfied are you with the working conditions at your current job?

000333

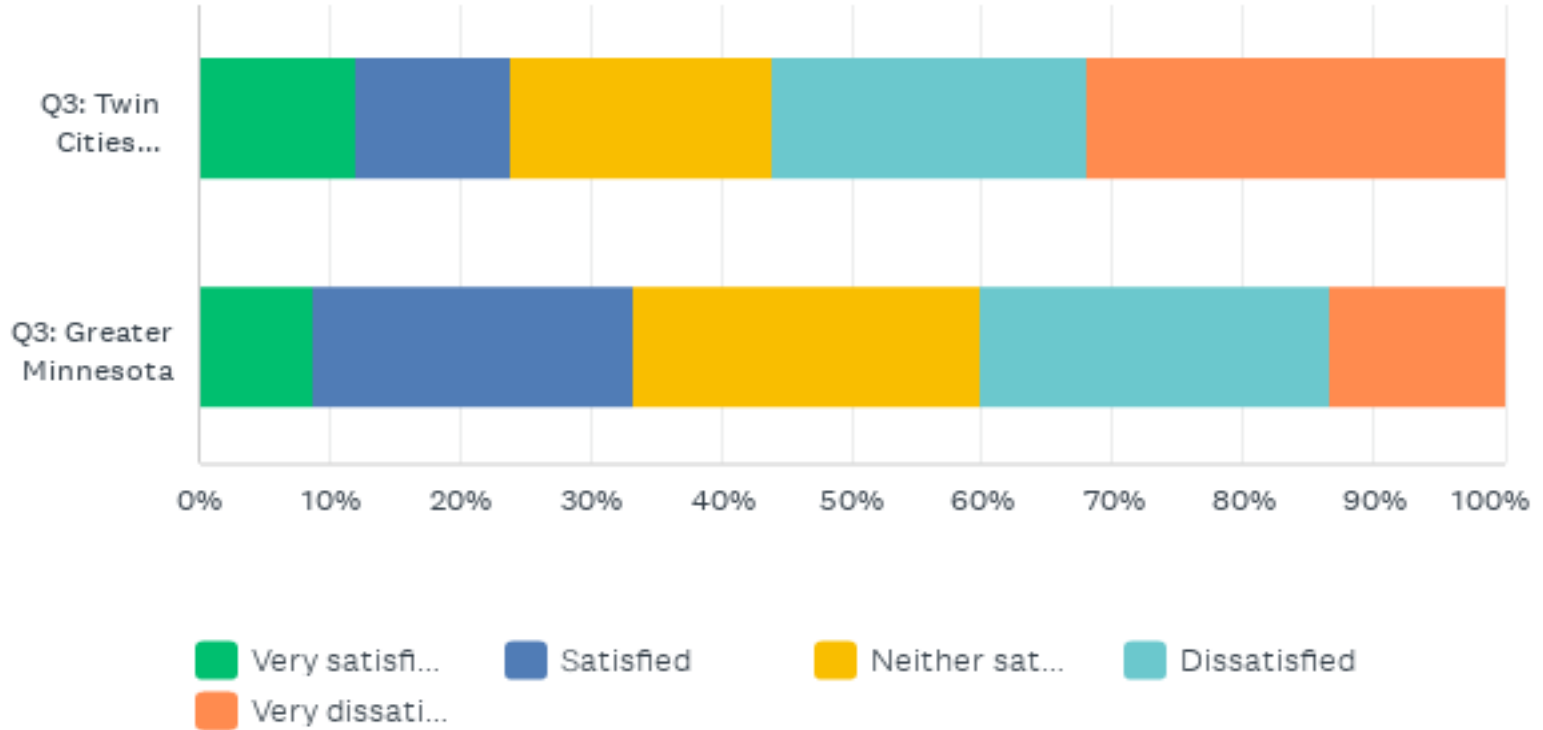
Answered: 70 Skipped: 4



# Q16: How satisfied are you with the working conditions at your current job?

000334

Answered: 70 Skipped: 4



## Q16: How satisfied are you with the working conditions at your current job?

000335

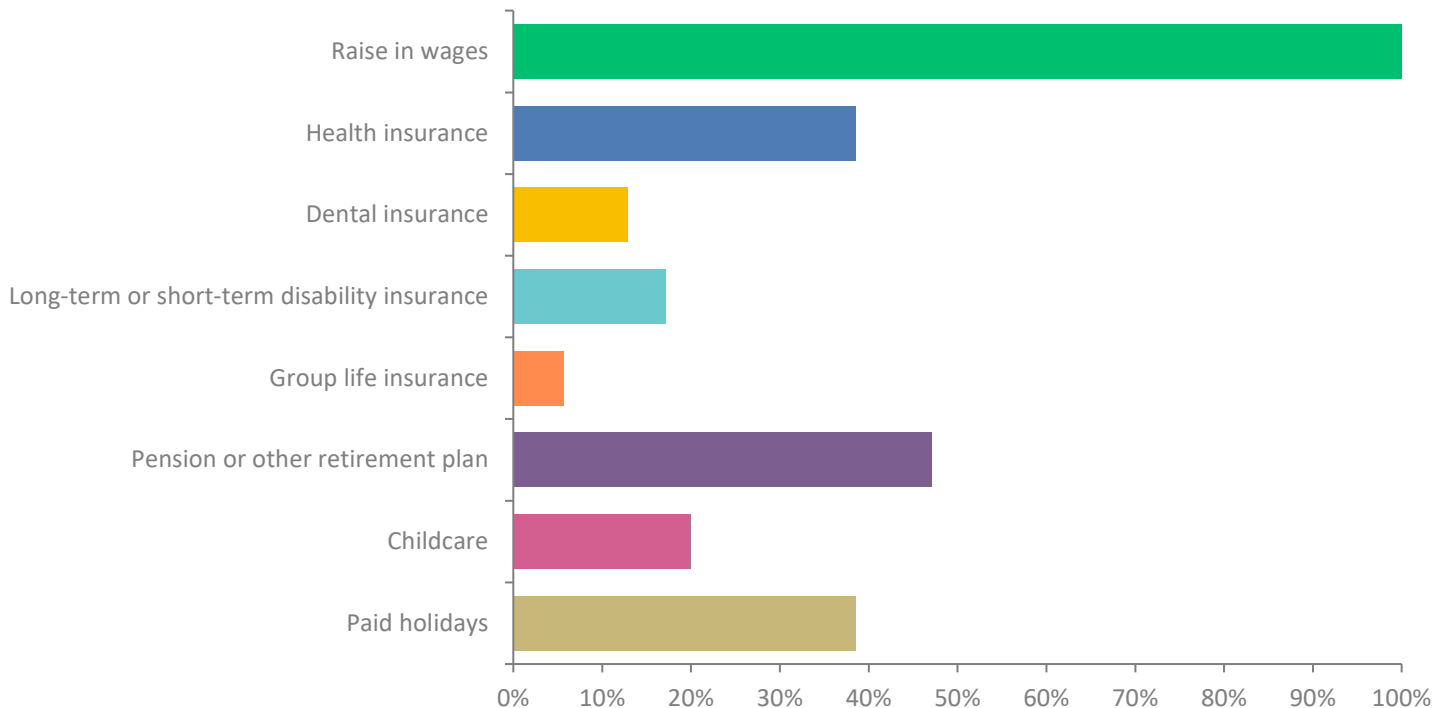
Answered: 70 Skipped: 4

ANSWER CHOICES	RESPONSES	
Very satisfied	10.0%	7
Satisfied	20.0%	14
Neither satisfied nor dissatisfied	24.29%	17
Dissatisfied	25.71%	18
Very dissatisfied	20.0%	14
TOTAL		70

# Q17: If there were additional funds for compensation and benefits, what would be your top three choices for that funding to go toward?

000336

Answered: 70 Skipped: 4



# Q17: If there were additional funds for compensation and benefits, what would be your top three choices for that funding to go toward?

000337

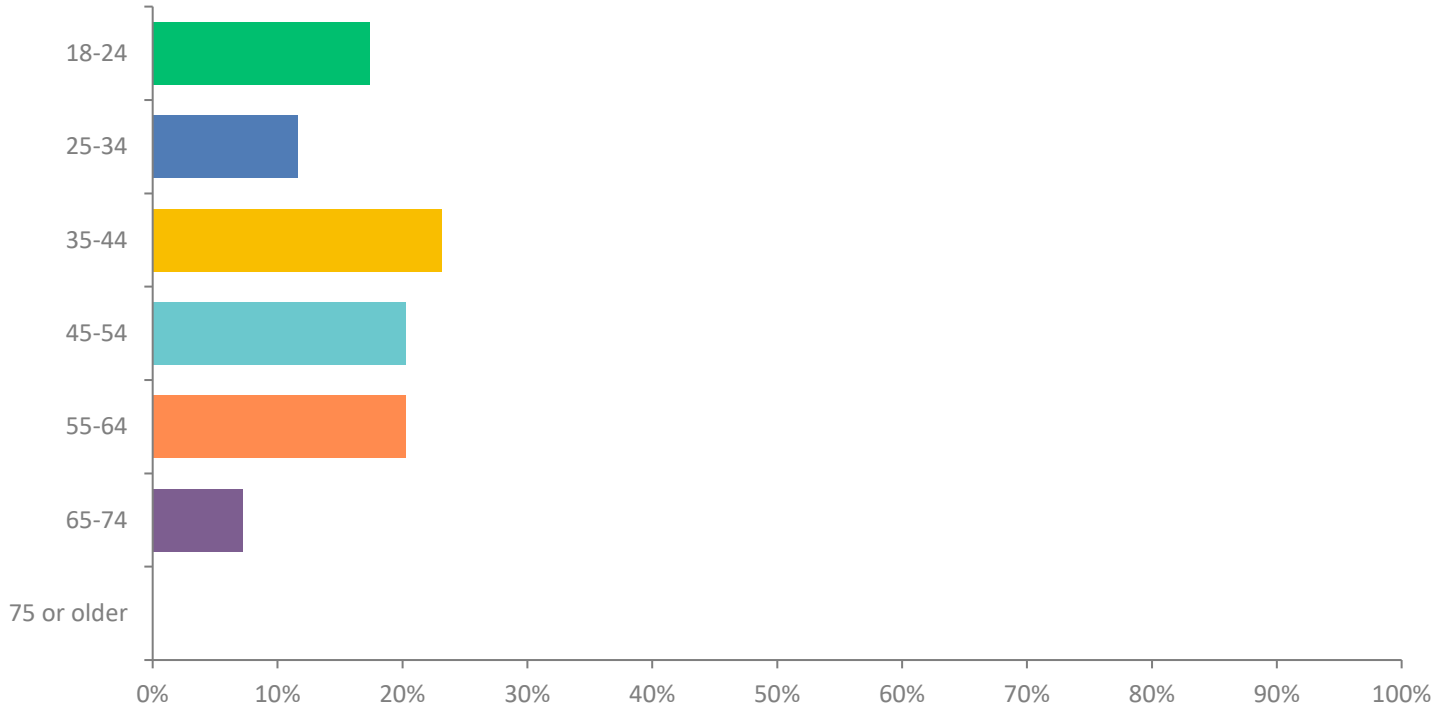
Answered: 70 Skipped: 4

ANSWER CHOICES	RESPONSES	
Raise in wages	100%	70
Health insurance	38.57%	27
Dental insurance	12.86%	9
Long-term or short-term disability insurance	17.14%	12
Group life insurance	5.71%	4
Pension or other retirement plan	47.14%	33
Childcare	20.0%	14
Paid holidays	38.57%	27
<b>TOTAL</b>		<b>196</b>

# Q18: What is your age?

000338

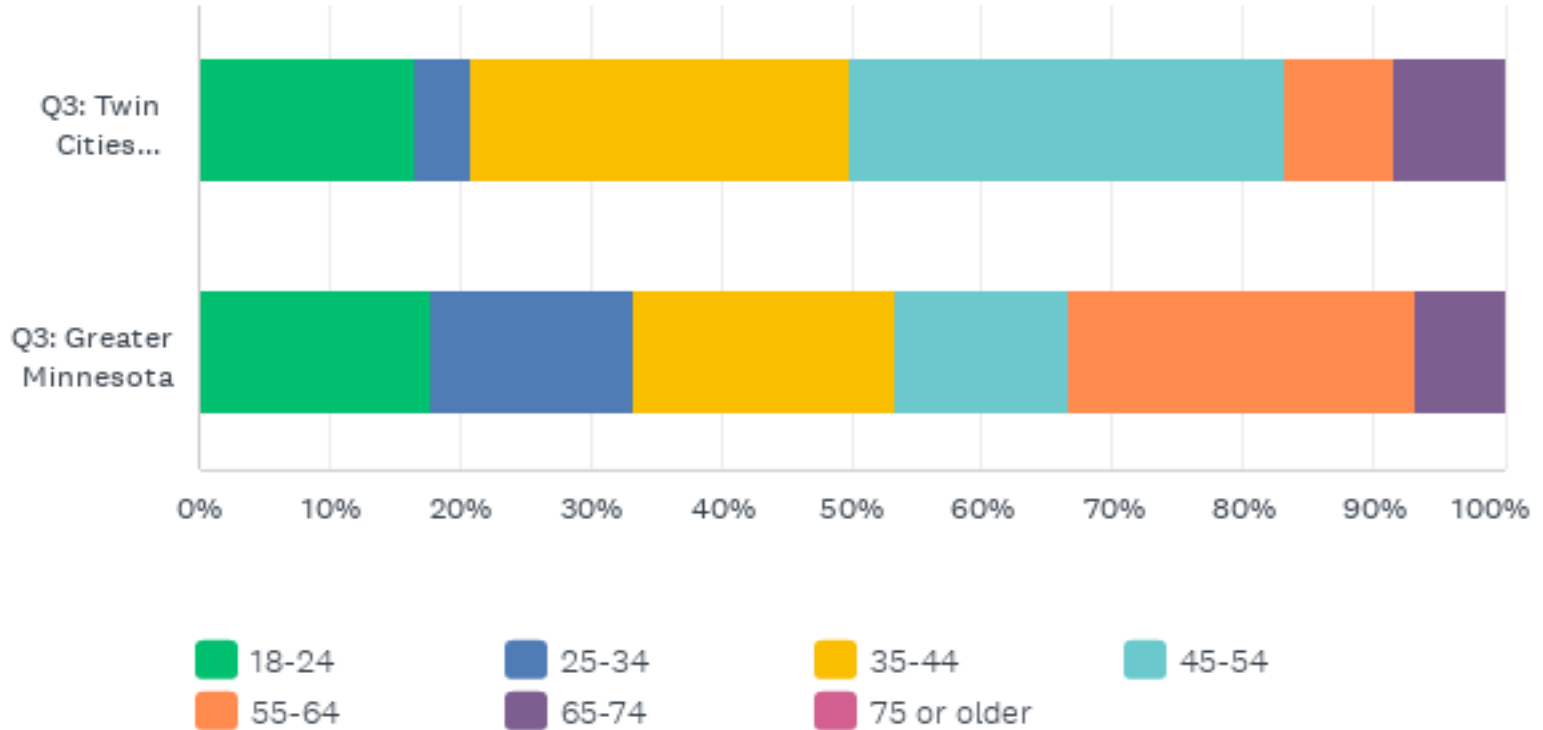
Answered: 69 Skipped: 5



# Q18: What is your age?

000339

Answered: 69 Skipped: 5



# Q18: What is your age?

000340

Answered: 69 Skipped: 5

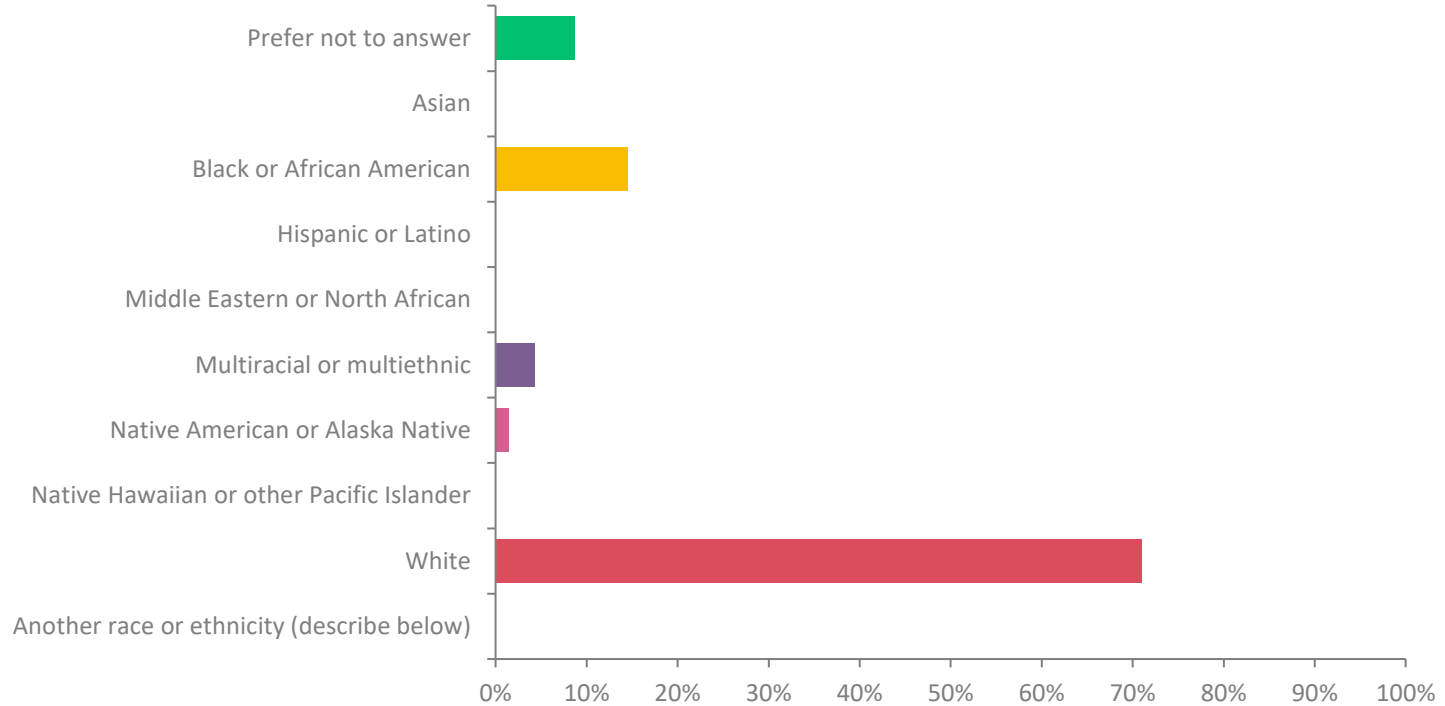
ANSWER CHOICES	RESPONSES	
18-24	17.39%	12
25-34	11.59%	8
35-44	23.19%	16
45-54	20.29%	14
55-64	20.29%	14
65-74	7.25%	5
75 or older	0%	0
TOTAL		69



# Q19: What is your race or ethnicity?

000341

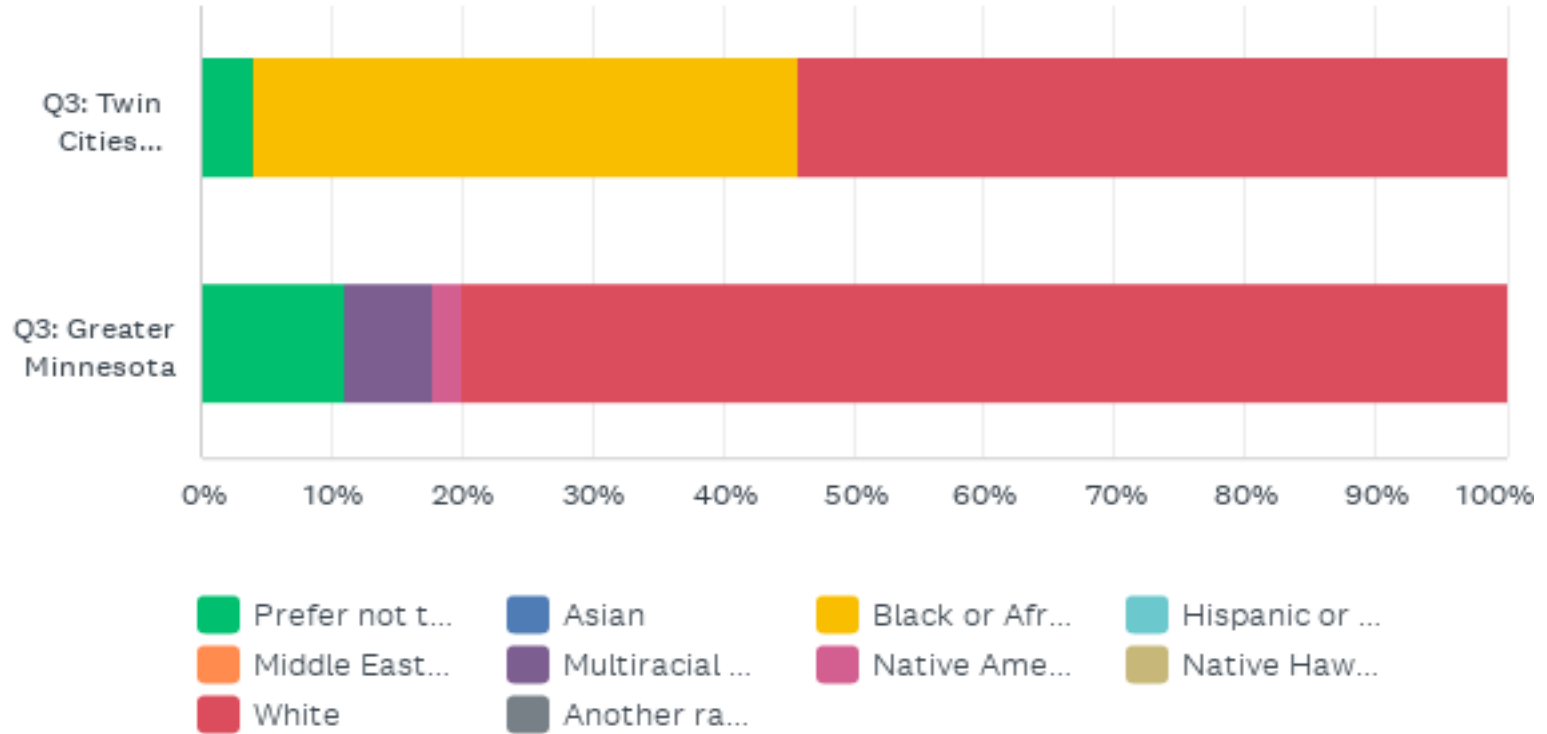
Answered: 69 Skipped: 5



# Q19: What is your race or ethnicity?

000342

Answered: 69 Skipped: 5



# Q19: What is your race or ethnicity?

000343

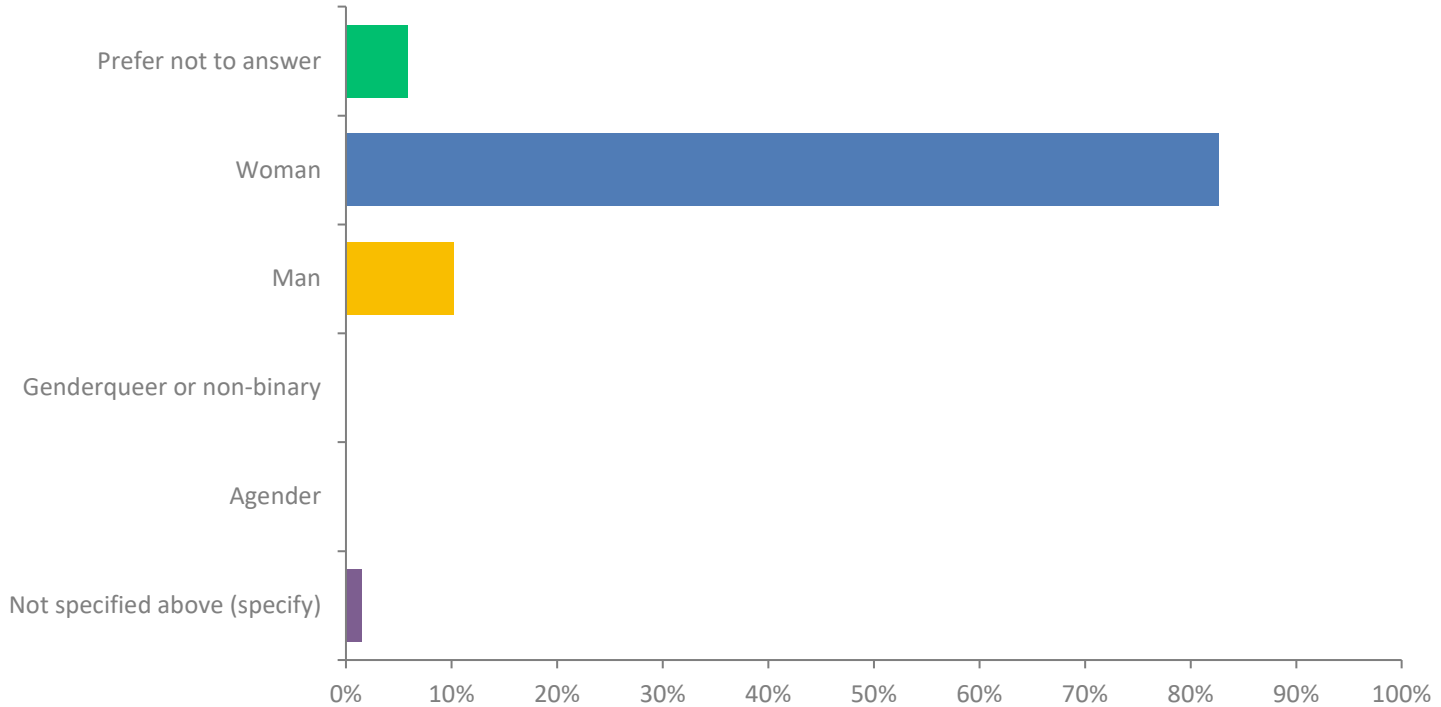
Answered: 69 Skipped: 5

ANSWER CHOICES	RESPONSES	
Prefer not to answer	8.70%	6
Asian	0%	0
Black or African American	14.49%	10
Hispanic or Latino	0%	0
Middle Eastern or North African	0%	0
Multiracial or multiethnic	4.35%	3
Native American or Alaska Native	1.45%	1
Native Hawaiian or other Pacific Islander	0%	0
White	71.01%	49

# Q20: What is your gender identity?

000344

Answered: 69 Skipped: 5



## Q20: What is your gender identity?

000345

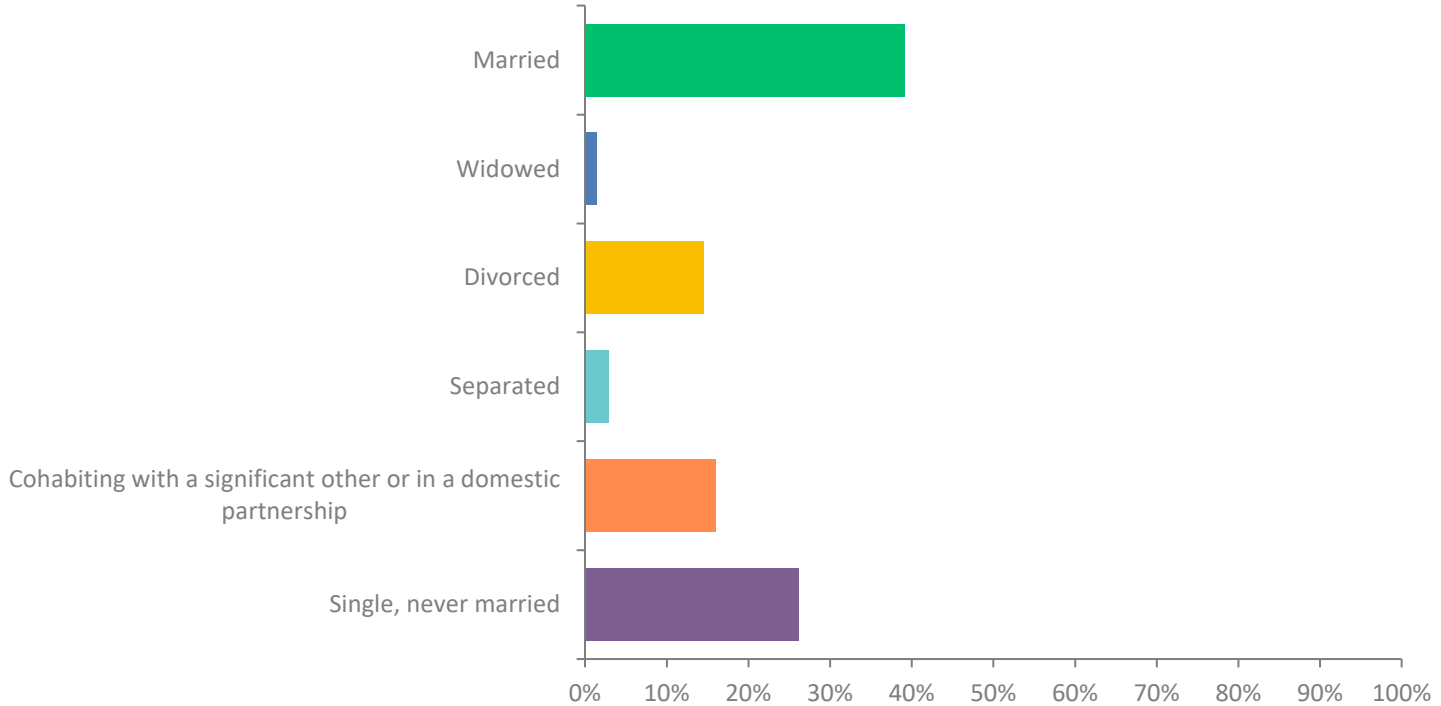
Answered: 69 Skipped: 5

ANSWER CHOICES	RESPONSES	
Prefer not to answer	5.80%	4
Woman	82.61%	57
Man	10.14%	7
Genderqueer or non-binary	0%	0
Agender	0%	0
Not specified above (specify)	1.45%	1
<b>TOTAL</b>		<b>69</b>

# Q21: Which of the following best describes your current relationship status?

000346

Answered: 69 Skipped: 5



## Q21: Which of the following best describes your current relationship status?

000347

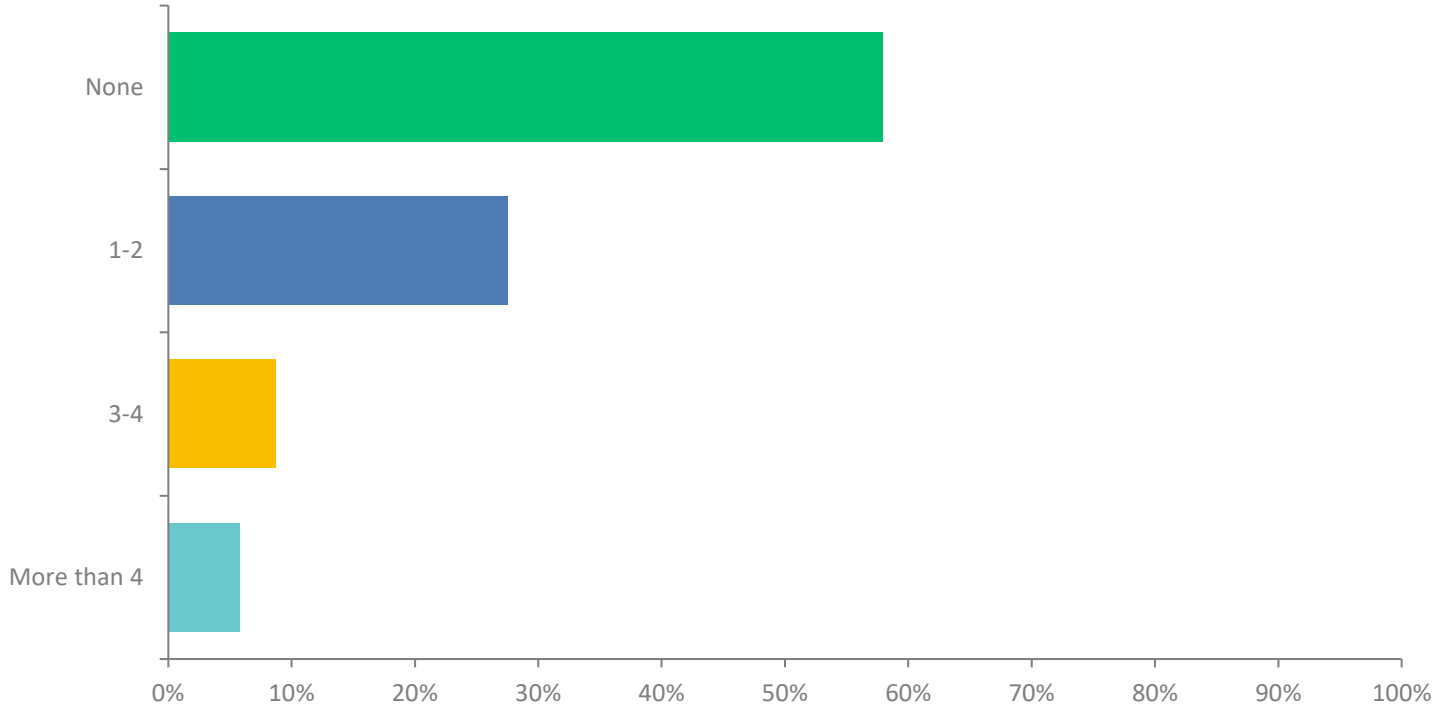
Answered: 69 Skipped: 5

ANSWER CHOICES	RESPONSES	
Married	39.13%	27
Widowed	1.45%	1
Divorced	14.49%	10
Separated	2.90%	2
Cohabiting with a significant other or in a domestic partnership	15.94%	11
Single, never married	26.09%	18
<b>TOTAL</b>		<b>69</b>

# Q22: How many dependents do you have living with you?

000348

Answered: 69 Skipped: 5





## Q22: How many dependents do you have living with you?

000349

Answered: 69 Skipped: 5

ANSWER CHOICES	RESPONSES	
None	57.97%	40
1-2	27.54%	19
3-4	8.70%	6
More than 4	5.80%	4
TOTAL		69

**RECEIVED**

By: OAH on 8/12/2024 2:08 PM

OAH Docket Number: \_\_\_\_\_

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

**Proposed Rules Governing Holiday Pay,  
Certification of Worker Organizations,  
and Notice Posting Requirements For  
Nursing Home Workers**

**NOTICE OF APPEARANCE**

**PLEASE TAKE NOTICE that:**

1. The party/agency named below (Party/Agency) will appear at the prehearing conference and all subsequent proceedings in the above-entitled matter.

2. By providing its email address below, the Party/Agency chooses to opt into receiving electronic notice from the Office of Administrative Hearings in this matter. **Note: Provision of an email address DOES NOT constitute consent to electronic service from any opposing party or agency in this proceeding.**<sup>1</sup>

3. The Party/Agency agrees to use best efforts to provide the Office of Administrative Hearings with the email address(es) for opposing parties and their legal counsel.

**Party's/Agency's Name:** Nursing Home Workforce Standards Board

Email: nhwsb.dli@state.mn.us Telephone: 651-284-5076

Mailing Address: Attn: Leah Solo, 443 Lafayette Road N., St. Paul, MN 55155

**Party's/Agency's Attorney:** Ali Afsharjavan and Paul Enger

Firm Name: Department of Labor and Industry

Email: ali.afsharjavan@state.mn.us | paul.enger@state.mn.us Telephone: 651-284-5270 | 651-284-5016

Mailing Address: Attn: Ali Afsharjavan, Paul Enger 443 Lafayette Road N., St. Paul, MN 55155

**Respondent's/Opposing Party's Name:** \_\_\_\_\_

Email: \_\_\_\_\_ Telephone: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Dated: August 12, 2024

/s/ Ali P. Afsharjavan                      /s/ Paul R. Enger  
**Signature of Party/Agency or Attorney**

<sup>1</sup> In order to opt in to electronic notice, this form must be emailed to [OAH.efiling.support@state.mn.us](mailto:OAH.efiling.support@state.mn.us). If the party does not wish to opt in to electronic notice, this form may be filed with the Office of Administrative Hearings via facsimile, U.S. Mail, or personal service. See 2015 Minn. Laws Ch. 63, Minn. R. 1400.5550, subps. 2-5 (2017).

Note: This form must be served upon the opposing party/agency. Counsel may not withdraw from representation without written notice.