

## Memo

**Date:** 7/2025  
**To:** Waiver and Variance Workgroup  
**From:** Executive Director Leah Solo

### RE: Next steps on Waivers and variances

The initial process for evaluating waivers and variances from NHWSB standards applications focused on the financial statements of the nursing home to understand whether the cost of the standards might drive a nursing home to closure or receivership. Prior discussions about a facility's application for a waiver assumed that facilities would close only when nursing homes were in a dire financial position. Discussion and research have shown that sometimes nursing homes close when there is not a dire financial situation but based on other fixed or flexible factors. Below is an initial draft of a process for evaluating different types of factors that could lead to a nursing home closing and evaluating whether it could be said that the closure was due to compliance with the standards. For reference, this is the waiver and variance language found in Minn. Stat. § 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.

In essence, the evaluation of the applications for a waiver or variance could move from trying to determine how dire their financial situation is to determining their likelihood of closure due to the standards.

This Workgroup has identified numerous risk factors that put facilities at risk of closure or receivership, which are recapped in the section immediately below. The Workgroup should now consider shifting its focus to providing the Board guidance on adopting procedures to facilitate the Board's evaluation that a facility's risk of closure or receivership is "due to compliance with all of part of an applicable standard", as opposed to risk factors that are unrelated to compliance with the standards. The workgroup should continue its work to identify additional factors that may lead a nursing facility to close, while placing those factors in the context of how compliance with the standards will impact those risk factors.

### Factors in evaluating risk of closure, due to compliance

Below is a table with some categories of factors that the workgroup has identified so far that could lead to an increased risk of closure or receivership and some questions that the Board could ask to evaluate the effect of compliance with the Board's standards on those risk factors. This can be used to guide discussion.

Table 1: Draft evaluation

Factors	Financials	Folks (Census)	Fixed	Flexible
Description of category	Financial statements that demonstrate whether or not the nursing home has financial resources to continue their operations.	Does the nursing home have enough residents to keep their nursing home open and solvent or are they in a downward spiral?	Does the nursing home have risk factors that are permanent or not easily changed or determined by outside forces?	Does the nursing home have unique factors that could be changed by the nursing home employer?
	<i>When examining their financials, do they have the cash on hand (COH) to pay their staff, care for patients, maintain their facility and pay their debts.</i>	<i>One stakeholder studied this years ago and the break-even line was around 35 residents. Now many survive with many fewer residents.</i>	<i>Examples: being hospital attached, in a rural area, lowest performer in a chain of nursing homes, in a competitive market</i>	<i>Examples: a leave policy that is drastically different than the holiday pay rules</i>
What risk factors does the applicant report?				
How likely is closure based on reported factors, notwithstanding the standards?				
How do the standards affect reported risk factors?				
Evaluating all the factors in this process, does the Board believe that this nursing home is at a risk of closure or receivership due to the standards? If they were already at a risk of closure, do the standards increase the risk of closure or receivership enough to warrant a waiver or variance?				

Some discussion questions for the workgroup and Board to consider, as they evaluate and practice using the tables with the provided hypothetical scenarios are:

- Are there missing categories?
- Are there missing questions?

### **Avoiding numerically rating the evaluation**

Reflecting on discussion that the Board has had thus far, it can be seen that the Board is looking for rules and numbers that would help determine if a nursing home should receive a waiver or variance and been frustrated that those rules are not clear. Waivers and variances are supposed to be just that- exceptions to the rules. Exceptions usually do not fall into a neatly defined box or adhere to a 1-10 scale. The Board has already seen that the reasons for needing a waiver can be varied and unique.

Through the process that the Board is mandated to put together, the Board is naming the aspects to look at. Through the evaluation of those aspects that the Board is mandated to do, the Board should be able to determine if the nursing home should receive a waiver or variance.

In keeping discussion of unique factors at the center of the process, the Board can avoid some problematic situations. For instance, the Board could foresee that they could receive two applications for a waiver that had very similar financial statements that could receive a similar “rating.” But upon discussion, one nursing home was hospital attached and located in a rural area, while the other was part of a small chain with significant resources with a strong census. Those differences could have in impact in the Board’s determination which would only come to light through discussion.

This also ensures that the Board is not limiting itself by drawing a numerical line that allows or disallows the Board from discussing a waiver.

Finally, avoiding a numerical/checklist approach not only preserves the Board’s flexibility to consider applications on a case-by-case basis, but it also best comports with the Board’s statutory mandate: the Board is directed to “adopt procedures” for considering waivers and variances, which facilitate the “Board’s evaluation” of the particular application, which relies on the entire Board’s significant subject matter expertise and practical experience. A numerical/checklist approach runs the risk of substituting a “procedure” for the Board’s “evaluation” and could lead to a situation where it could be claimed that the Board was not completing a thorough evaluation and instead “rubber-stamping” a checklist completed by a workgroup.

### **How does this combine with our current process and application?**

Including these different types of factors and evaluating them through discussion moves the process from a search to determine how dire their financial situation is to determining their likelihood of closure due to the standards.

The current process for evaluating applications involves nursing facilities submitting financial statements, including the costs of the standards for their facility, stating their need for a waiver or variance, stating their plans to come into compliance, and attesting to truthfulness of their statements.

A revision to this process could include asking about their census and census trends, more details on their plans for staying open or closing, and about other factors that could push them one way or the other.