

Practicing “Due to compliance”

It is imperative for the workgroup and the Board to remember that the statute includes the phrase “due to compliance.” The risk of closure or receivership needs to come from the complying with the standards. The Board has already seen the wide variety of situations that the nursing homes find themselves in. In essence, the Board needs to determine if the risk of closure or receivership is due to compliance with the standards or other factors such as, a business decision, poor management, declining census.

For the Board to more fully discern the complexity of determining if a risk of closure or receivership is due to compliance with the standards, below are some situations that the workgroup and Board may want to consider. These scenarios are entirely fictional and are not intended to represent any actual facilities.

Scenario 1:

A nursing facility has had a basement flood this summer. Their facility was already operating on a thin margin, but they have a strong census with their 80-bed facility at 96% capacity. The facility has little in reserved funds but is not currently delinquent on any payments. Insurance money will cover some of the damage, but they also had some facility modernization in the basement that they need to do soon. It will be cheaper to do the repairs and the modernization at the same time, but that means using reserves and cutting a bit into their operating budget. If they wait, they are not sure when they will have the funds to fully cover the cost of modernization on its own and the basement space will fall out of compliance. They are asking for a one-year waiver from the holiday pay and a variance of \$18/hour general minimum wage and a \$21/hour CNA minimum wage. The repairs and modernization should be done by then and they will not need to take from their operating budget.

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 ?				
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?				

Scenario 2:

A nursing home employer believes that the minimum wage standards and holiday pay get in the way of their relationship with their employees and their independence to run their business. They have developed good worker relationships and agreed on principles for PTO and a wage scale that fits the community and the workforce. They believe they no longer have the freedom to run their business and are planning on closing it. They say they will immediately start closing procedures unless they are given a 2-year waiver from the wages and holiday pay to find someone else to buy the home.

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?
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Scenario 3:

Nursing home is on a trajectory to close- they are in a downward spiral with census, in a rural area. They have multiple open positions with no qualified applicants for several years and their facility needs major upgrades. They have had several citations from MDH. They have been open about their financial struggles and have had difficulty paying their vendors. Their request is to have a waiver from the minimum wage standards for 2 years. Their plan to come into compliance is that they are going to continue to try to find a donor to help their facility.

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?
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