

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. 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*,

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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

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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:

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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;

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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.

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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.