

## **Nursing Home Workforce Standards Board**

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

#### **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 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:

(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;

(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.**

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.