

## S.F. No. 1621 – Minnesota Nursing Home Workforce Standards Board Act (A-2 amendment)

**Author:** Senator Sandra L. Pappas

**Prepared by:** Carlon Doyle Fontaine, Senate Counsel (651/296-4395)

**Date:** February 27, 2023

---

**S.F. 1621** establishes the Minnesota Nursing Home Workforce Standards Board

Section 1. **Title.** Provides that sections 181.211 to 181.217 may be cited as the Minnesota Nursing Home Workforce Standards Board Act.

Section 2. **Compliance orders.** Authorizes the commissioner of labor and industry to issue orders to comply with any rule establishing nursing home employment standards under section 181.213 or notice requirements under section 181.215.

Section 3. **Employer liability.** Authorizes the commissioner of labor and industry to impose liability on employers for violations of any rule establishing nursing home employment standards under section 181.213 or notice requirements under section 181.215. Under existing law, the commissioner must order an employer to pay back pay, gratuities, compensatory damages, and liquidated damages to an aggrieved employee, and may impose a civil penalty of up to \$1,000 for each willful or repeat violation.

Section 4. **Definitions.** Adds section 181.211. Defines terms for sections governing the Nursing Home Workforce Standards Board. Terms defined are board, certified worker organization, commissioner, employer organization, nursing home, nursing home employer, nursing home worker, and worker organization.

Section 5. **Minnesota Nursing Home Workforce Standards Board; establishment.** Adds section 181.212. Establishes the board, specifies voting members of the board, and provides for terms, vacancies, election of a chairperson, staffing, compensation, application of other laws, voting, hearings and investigations, and department support.

Subd. 1. **Board established; membership.** Establishes the Minnesota Nursing Home Workforce Standards Board and lists voting members of the board: the commissioners of human services, health, and labor and industry or designees; three members who represent nursing home employers

or employer organizations, appointed by the governor in accordance with existing law; and three members who represent nursing home workers or worker organizations, appointed by the governor in accordance with existing law.

Subdivision 2. **Terms; vacancies.** Provides that board members appointed to represent nursing home employers or employer organizations and nursing home workers or worker organizations shall serve four-year terms following the initial staggered lot determination of term length. Specifies that the governor shall fill vacancies of members representing nursing home employers or employer organizations and nursing home workers or worker organizations by appointment for the unexpired term, and prohibits members appointed to represent nursing home employers or employer organizations and nursing home workers or worker organizations from being appointed to more than two consecutive terms.

Subdivision 3. **Chairperson.** Requires the board to elect a member to serve as its chairperson.

Subdivision 4. **Staffing.** Allows the commissioner to employ an executive director for the board and other personnel.

Subdivision 5. **Compensation.** Allows board members to be compensated at \$55 per day spent on board activities, plus expenses as authorized by the commissioner's plan. Provides that members who are public employees must not receive the daily payment for activities unless they use vacation time or compensatory time for board activities, and allows members who are public employees to be reimbursed for expenses.

Subdivision 6. **Application of other laws.** Provides that board meetings must comply with Open Meeting Law requirements and that the board is subject to the Data Practices Act and existing law governing appointments to multimember agencies.

Subdivision 7. **Voting.** Provides that an affirmative vote of five board members is required to take action.

Subdivision 8. **Hearings and investigations.** Requires the board to hold public hearings and conduct investigations into nursing home working conditions in accordance with section 181.213.

Subdivision 9. **Department support.** Requires the commissioner of labor and industry to provide staff support to the board in performing rulemaking and its assigned duties, as well as office space and supplies.

Section 6. **Duties of the board; minimum nursing home employment standards.** Adds § 181.213. Requires the board to adopt rules that establish minimum nursing home employment standards based on the board's investigations of market conditions and existing wages, benefits, and working conditions for nursing home workers.

Subdivision 1. **Authority to establish minimum nursing home employment standards.** Requires the board to adopt rules establishing minimum nursing home employment standards that include standards for compensation, working hours, and other working conditions. Requires standards to be at least as protective of nursing home workers as other applicable laws or standards previously adopted by the board. Allows the board to establish statewide standards, standards for specific occupations, and standards for specific geographic areas of the state. Requires initial standards to be adopted by August 1, 2024, and allows the board to use the expedited rulemaking process to adopt

initial rules. Requires the board to consult with the department in developing standards prior to the rulemaking adoption process. If minimum standards considered by the board fall within the jurisdiction of occupational safety and health, requires the board to recommend any occupational safety and health standards to the commissioner of labor and industry, and requires the commissioner to adopt rules establishing the recommended standards unless the recommended standard is outside the commissioner's authority, poses enforceability challenges, is infeasible to implement, or is otherwise unlawful.

Subdivision 2. **Investigation of market conditions.** Requires the board to investigate market conditions and existing wages, benefits, and working conditions for nursing home workers for specific geographic areas and for specific nursing home occupations, and to seek to adopt minimum standards that meet or exceed existing conditions for a majority of nursing home workers. Lists information the board must consider when making determinations of reasonably necessary employment standards.

Subdivision 3. **Review of standards.** Requires the board to review previously adopted minimum nursing home employment standards every two years and update the standards or recommend updates to them using the expedited rulemaking process.

Subdivision 4. **Conflict.** Except as provided in paragraphs (b) and (c), if there is a conflict with a rule adopted by the board and a rule adopted by another state agency, the board rule applies to nursing home workers and nursing home employers. However, under paragraph (b), if the conflicting rule adopted by the other state agency is adopted after the board's rule and is more protective or beneficial than the board's rule, the rule of the other state agency applies to nursing home workers and nursing home employers. Under paragraph (c), if the commissioner of health determines that a rule adopted or recommended by the board conflicts with a federal regulation or state standard for nursing home certification or licensure of nursing homes, the conflicting federal regulation or state standard will apply to nursing home workers and nursing home employers.

Subdivision 5. **Effect on other agreements.** Provides that the statutes governing the Board do not limit the rights of parties to a collective bargaining agreement to bargain and agree on nursing home employment standards, and do not diminish the obligations of nursing home employers to comply with contracts, collective bargaining agreements, and employment benefit programs and plans that meet or exceed and do not conflict with the requirements in statutes and board rules.

Section 7. **Duties of the board; training for nursing home workers.** Adds § 181.214. Requires the board to certify worker organizations to provide training to nursing home workers, establish curriculum requirements, and annually review the adequacy of curriculum requirements and revise them as appropriate. Also lists duties of certified worker organizations and nursing home employers, and requires nursing home workers to be compensated for training at their regular hourly rate, plus travel expenses for any offsite training.

Subdivision 1. **Certification of worker organizations.** Requires the board to certify worker organizations to provide training to nursing home workers, and to establish certification criteria in rule and establish a process for renewal of certification. Allows the board to use the expedited rulemaking process to establish certification criteria.

Subdivision 2. **Curriculum.** Requires the board to establish curriculum requirements for nursing home worker training and lists information a curriculum must provide. Requires the board to hold at

least one public hearing to solicit input on the requirements before establishing initial curriculum requirements.

Subdivision 3. **Topics covered in training session.** Provides that a certified worker organization is not required to cover all training topics in a single training session, and allows the organization to provide instructions on the topics over the course of up to three training sessions.

Subdivision 4. **Annual review of curriculum requirements.** Requires the board to annually review the adequacy of its curriculum requirements, including holding at least one public hearing to solicit input, and to revise requirements as appropriate.

Subdivision 5. **Duties of certified worker organizations.** Lists requirements for certified worker organizations providing training to nursing home workers. Allows certified worker organizations to survey training attendees to assess the effectiveness of training sessions and industry compliance with the Act and laws governing nursing home working conditions or worker health and safety.

Subdivision 6. **Nursing home employer duties regarding training.** Requires a nursing home employer to certify compliance to the board that every six months each of its nursing home workers completed one hour of required training. If requested by the certified worker organization, requires a nursing home employer to provide the organization with names and contact information of nursing home workers who attended the training, unless nursing home workers opt out of having their information provided.

Subdivision 7. **Compensation.** Requires a nursing home employer to compensate nursing home workers at their regular hourly rate for hours of training completed according to this section and reimburse them for any travel expenses for offsite training sessions.

Section 8. **Required notices.** [§ 181.215] Requires nursing home employers to provide notices informing nursing home workers of their rights and obligations regarding applicable minimum nursing home employment standards and local minimum standards. Specifies minimum requirements for providing notice by a readily seen posting or through paper or electronic copies, and requires the notice to inform nursing home workers that they may request the notice to be provided in a specific language. Requires the board to adopt rules using the expedited rulemaking process specifying minimum content and posting requirements for notices required in this section, and to make available a template or sample notice.

Section 9. **Retaliation prohibited.** [§ 181.216] Prohibits retaliation, including discharge or demotion, against a nursing home worker for exercising any right under the Minnesota Nursing Home Workforce Standards Board Act, for participating in any hearing, investigation, proceeding, or training as provided under the Act, for informing another employer that a nursing home worker has engaged in protected activities under the Act, or for reporting or threatening to report the immigration or citizenship status of a current or former nursing home worker or the worker's family member. Requires reinstatement with the same conditions of employment for a nursing home worker who experiences retaliation.

Section 10. **Enforcement.** [§ 181.217] Provides for enforcement of the Minnesota Nursing Home Workforce Standards Board Act by the commissioner of labor and industry.

Subdivision 1. **Minimum nursing home employment standards.** Except as provided in section 181.213, subdivision 4, paragraphs (b) or (c), requires nursing home employers to follow at least the

minimum employment standards for wages, maximum number of hours, and working conditions for nursing home workers. Except as provided in section 181.213, subdivision 4, paragraphs (b) or (c), prohibits nursing home employment that would provide lower wages, longer hours, or worse conditions than the minimum required by state law.

Subdivision 2. **Investigations.** Authorizes the commissioner of labor and industry to investigate suspected violations of the Minnesota Nursing Home Workforce Standards Board Act.

Subdivision 3. **Civil action by nursing home worker.** Allows a nursing home worker or class of nursing home workers aggrieved by a violation of the minimum employment standards under the Act to bring a civil cause of action in district court. Requires the employer to pay any wages, benefits, or overtime owed, plus an additional equal amount as liquidated damages. Allows employees to seek damages and other appropriate relief, including attorney's fees. Also authorizes the court to issue orders to comply and to order reinstatement of an employee subject to retaliation. Provides that a labor agreement that fails to meet minimum nursing home employment standards is not a defense.

Section 11. **Initial appointments.** Requires the governor to make initial appointments to the Board no later than August 1, 2023.