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**U.S. House of Representatives**  
**Rep. Sharice L. Davids**  
**Kansas Third District**

October 18, 2023

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Administrator Brooks-LaSure,

Thank you for your ongoing commitment to providing safe and affordable healthcare coverage to millions of Americans. As you know, a critical part of carrying out the Centers for Medicare & Medicaid Services' (CMS) mission are Medicare- and Medicaid-certified long-term care (LTC) facilities. These LTC facilities, including more than 40 urban and rural settings in Kansas' Third District, provide post-acute and long-term continuous care for roughly 1.2 million Americans nationwide.

On September 1, 2023, CMS proposed the Minimum Staffing Standards for LTC Facilities and Medicaid Institutional Payment Transparency Reporting rule. This proposed rule, which comes in response to the height of the COVID-19 pandemic, establishes certain staffing mandates for qualifying LTC facilities, including requiring:

- 0.55 hours per resident day (HPRD) of Registered Nurse (RN) staffing,
- 2.45 HPRD of Nurse Aide (NA) staffing,
- LTC facilities to have an RN onsite 24 hours per day, seven days a week (24/7), and
- Other facility assessment requirements.

Alongside this proposal, CMS and the Health Resources and Services Administration (HRSA), announced a \$75 million investment in our nation's nursing workforce. I commend CMS for working to achieve our shared goal of quality and dignified care for LTC facility patients nationwide. And while I appreciate CMS and HRSA's planned investment in our nursing workforce and the staggered implementation timelines in this proposed rule, I also have significant concerns about the achievability of these staffing requirements.

According to a report published on September 18, 2023, KFF estimates that fewer than 20 percent of LTC facilities currently meet the requirements for RN and NA staffing; in Kansas, just 43 percent of LTC facilities currently meet the combined 3.00 HPRD proposed requirement. Per LeadingAge Kansas – which represents 150 facilities statewide – Kansas currently has more than 5,000 RN and 1,000 NA job openings; if this rule were to go into effect, Kansas facilities would

need to hire 51 RNs and 369 NAs to meet the 3.00 HPRD requirement plus an additional 109 RNs to meet the 24/7 requirement. Data from the American Health Care Association (AHCA) shows that just 12 percent of facilities in Kansas' Third District currently meet all three proposed staffing requirements and that those facilities would need to hire approximately 169 RNs and NAs to become compliant. These statistics do not account for several other compounding factors in Kansas, including a rapidly aging population, an aging nursing workforce, and a decrease in admissions to nursing education programs per the Kansas Board of Nursing.

More than 23,000 Kansans already live in an LTC desert, and this rule taking effect could lead to an increase in facility closures or facilities turning away residents to remain compliant.

I share CMS' objective of ensuring every LTC facility resident has safe, adequate, and timely care, but I believe that to meet these requirements, we must first focus on solving the root causes of staffing challenges across the country.

In addition to my comments above, I have attached feedback on this rule from LeadingAge Kansas and statistics relevant to Kansas' Third District from AHCA. In reviewing these materials and other public comments, I urge CMS to reconsider this proposal and work with LTC facilities and lawmakers to further address our nursing workforce crisis nationwide. Specifically, I stand ready to work with you and your staff to increase facilities' abilities to hire and retain staff – particularly in rural communities, boost enrollment in nursing education programs, and evaluate other solutions to this challenge, including but not limited to using telehealth opportunities to meet the 24/7 requirement and including Licensed Practical Nurses (LPNs) to help complement the work of RNs and NAs and meet staffing requirements.

I appreciate your ongoing attention to this critical issue. Should you have any questions or concerns, please contact Eric Dunay in my office at [eric.dunay@mail.house.gov](mailto:eric.dunay@mail.house.gov) or (202) 225-2865.

Sincerely,

A handwritten signature in blue ink, appearing to read "S. L. Davids".

Sharice L. Davids  
Member of Congress



**To: Representative Sharice Davids, KS 3<sup>rd</sup> District**

**From: Rachel Monger, President/CEO, LeadingAge Kansas**

**RE: CMS Proposed Minimum Staffing Rule Impact on Kansas Nursing Homes**

**Date: October 12, 2023**

LeadingAge Kansas is the state association for not-for-profit and mission-focused aging services. Its 150 member organizations across Kansas include over 100 not-for-profit nursing homes and long-term care units of critical access hospitals. Our organization has been in operation for nearly 70 years supporting providers serving in predominantly rural and frontier areas of the state. Before the COVID pandemic, our providers started facing workforce shortage challenges with fewer Kansans entering and graduating from nursing programs. Despite state statute requirements, the state of Kansas failed to adequately reimburse Medicaid rates to facilities for multiple years – limiting providers' ability to increase wages and compete in the labor market for direct support staff.

The pandemic exacerbated these challenges leading to more than 47 providers closing or reducing their offerings. All this is happening at a time when more Kansans are aging and needing increased access to care. By 2036, the 65+ population in Kansas will grow by 208,000. Nearly 85,000 Kansans are living in areas with only one nursing and residential care provider within a 30-minute drive and are at risk of joining the 23,000 Kansans already living in a care desert. Care deserts on average double the drive time needed to reach a provider and thereby limit access to care or risk access to friends, family, and loved ones. Due to the ongoing challenges our providers have faced, we feel compelled to outline the unintended consequences the proposed minimum staffing rule will have in Kansas.

#### **Points of Concern**

- **There is an insufficient nursing workforce pipeline to achieve the standards outlined in the proposed rule.**
  - According to CMS, if implemented tomorrow Kansas would need an additional 109 RNs to meet the 24/7 provision and a further 51 RNs and 369 NAs to meet the minimum staffing ratio provision for one day. That's in addition to the 5,291 RN job openings and 1,067 NA job openings in Kansas in August 2023, per the Kansas Department of Labor data.
    - This does not account for the expected increase of the aging population entering care over the next 10 years which will increase the staffing needs established by the ratios.

- The Kansas Board of Nursing data indicates fewer admissions from nursing programs each year – a net loss of 189 BSN and 23 ADN from 2018-2022.
  - The Kansas Board of Nursing data also shows an increasingly aging nursing workforce, with 42% of RNs in Kansas being 50 or older and preparing for retirement.
  - The Kansas Department of Labor data indicates that hospitals are the largest employer of nurses in Kansas at 65.27%, with nursing and residential care facilities at 7.87%.
    - Nursing home providers are already at a disadvantage in this labor market and this rule will have a cascading effect on the whole health care system including state agencies and state hospitals.
  - Unlike RNs, the Kansas Department of Labor indicates nursing and residential facilities are the primary employer for NAs in Kansas at 56.98%. However, fewer providers can meet the 2.45 NA hours per resident per day requirement, possibly due to the CNA training lockout.
  - LPNs are not in the rule counting towards the RN or NA staffing ratios, forcing this workforce sector to make a critical life decision: return to school or find a new job. The Kansas Department of Labor shows LPNs have found their home in nursing and residential facilities, with those employers making up 39.67% of the employment industry.
- **The waiver and exemptions for the proposed rule are unachievable.**
    - The waivers and exemptions require a survey process to demonstrate that the facility cannot meet the requirements but could be subject to penalties and exclusion from the exemption by doing so – a catch-22.
    - The state of Kansas is short 36 surveyors as of September 2023 contributing to delays in survey completion.
    - The provider would have to demonstrate they've offered prevailing wages in their geographic region – comparative to other facilities such as private hospitals.
  - **This proposed rule will lead to more closures and have unintended consequences of reducing access to care for Kansans – including congressional district 3.**
    - LeadingAge Kansas supports 10 providers in congressional district 3, with one located in a rural area. In total, these providers offer nearly 875 beds for residents in need of care but are at risk of reducing capacity due to inadequate staffing.
    - The providers in congressional district 3 would need to increase their staffing by 24.7% to meet the minimum staffing ratio standard.

- The estimated financial impact of the rule for our congressional district 3 providers alone is \$150,054.62 per year, with costs estimated to nearly triple including staffing agency costs at \$422,504.78 per year.

### **Summary and Request**

While our providers across the state of Kansas, including those in congressional district 3, are willing to hire additional direct support staff to meet the rule provisions, the nurse staffing pipeline in Kansas simply does not exist. Even if the pipeline were to exist, there is not adequate funding allotted to support providers in sustaining these requirements. The proposed rule is poorly timed as we expect to see more seniors in need of care and fewer individuals entering the profession, which will lead providers to reduce their offerings to maintain compliance. LeadingAge Kansas asks for Representative Sharice Davids's support in writing a letter to HHS and CMS outlining these concerns and asking for delayed finalization of the rule until adequate steps have been taken to increase the workforce pipeline and allocate additional funding to support the provisions of the rule.

# Proposed Minimum Staffing Impact Analysis

State	Congressional District	Urban/Rural	Census Urban Area
KS	03	All	All

## Impact Summary

### Nursing Facilities

Rural/Urban	SNFs
Rural	8
Urban	41
Total	49

### Nursing Facilities

Medicaid %	SNFs
1. Low <49%	17
2. Mid 49-63%	11
3. Mid-High 64-75%	9
4. High >=76%	12
<b>Total</b>	<b>49</b>

### % of Facilities Meeting Requirements

Medicaid %	0 of 3	1 of 3	2 of 3	3 of 3	Total
1. Low <49%	11.8%	29.4%	47.1%	11.8%	<b>100.0%</b>
2. Mid 49-63%		54.5%	36.4%	9.1%	<b>100.0%</b>
3. Mid-High 64-75%	44.4%	33.3%		22.2%	<b>100.0%</b>
4. High >=76%	41.7%	50.0%		8.3%	<b>100.0%</b>
<b>Total</b>	<b>22.4%</b>	<b>40.8%</b>	<b>24.5%</b>	<b>12.2%</b>	<b>100.0%</b>

### Needed Full Time Equivalents (FTEs)

Medicaid %	Nurse Aides	Registered Nurses*	Total
1. Low <49%	34.9	8.1	43.1
2. Mid 49-63%	8.9	5.1	14.0
3. Mid-High 64-75%	35.8	9.3	45.0
4. High >=76%	50.3	17.4	67.8
<b>Total</b>	<b>129.9</b>	<b>40.0</b>	<b>169.9</b>

## By Requirement

**2.45 Nurse Aide Hours per Resident Day (HPRD)**

Meet 2.45 NA HPRD?

- Select all
- No
- Yes

### Nursing Homes Meeting Requirements

Meet Reqt?	No	Yes	Total
Rural	37.5%	62.5%	<b>100.0%</b>
Urban	65.9%	34.1%	<b>100.0%</b>
<b>Total</b>	<b>61.2%</b>	<b>38.8%</b>	<b>100.0%</b>

### Additional FTEs Needed

**129.9**

Nurse Aides Needed

**0.55 Registered Nurse (RN) HPRD**

Meet 0.55 RN HPRD?

- Select all
- No
- Yes

### Meet Reqt? No Yes Total

Rural	25.0%	75.0%	<b>100.0%</b>
Urban	31.7%	68.3%	<b>100.0%</b>
<b>Total</b>	<b>30.6%</b>	<b>69.4%</b>	<b>100.0%</b>

**RN on Site 24 hours / 7 days a week**

Meet RN 24/7?

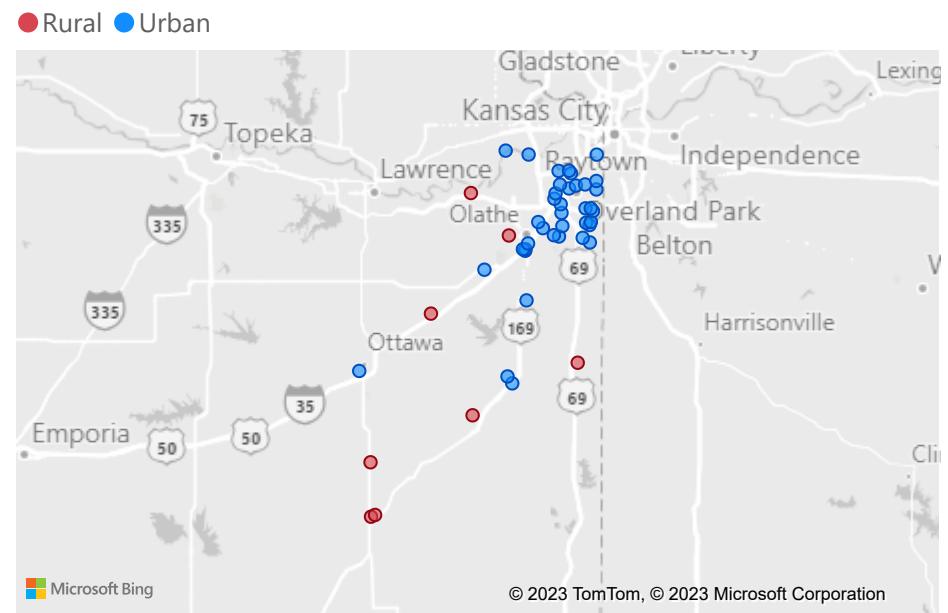
- Select all
- No
- Yes

### Meet Reqt? No Yes Total

Rural	87.5%	12.5%	<b>100.0%</b>
Urban	80.5%	19.5%	<b>100.0%</b>
<b>Total</b>	<b>81.6%</b>	<b>18.4%</b>	<b>100.0%</b>

**22.0**

RNs Needed



\*RNs not a direct sum of individual requirements as meeting one RN requirement will help meet the other.