

# STATE OF KANSAS

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GOVERNOR LAURA KELLY

November 1, 2023

The Honorable Xavier Becerra  
Secretary of Health and Human Services  
The U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Secretary Becerra:

I appreciate your commitment to transparency, safety, and overall quality of care for millions of Americans. As you are aware, a critical part of your position includes overseeing the Centers for Medicare and Medicaid Services (CMS), which provides guidance and oversight to Medicare- and Medicaid-certified long-term care (LTC) facilities. These facilities, including 317 nursing facilities and long-term care units of hospitals in Kansas, offer critical health care services for millions, including those in rural states such as ours.

On September 1, 2023, CMS proposed the Minimum Staffing Standards for LTC Facilities and Medicaid Institutional Payment Transparency Reporting rule. This proposed rule 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),
- Other facility assessment requirements, and
- Medicaid payment transparency requirements.

While I appreciate the intention of the proposed rule resulting in increased quality of care for residents served in nursing facilities, I have concerns with the unintended consequences a rule such as this may have on a rural state like Kansas.

Since the start of the pandemic, Kansas has seen nearly 47 facilities close or reduce their offerings. While other facilities have opened during this same time frame, this has resulted in a net closure of 1,713 Nursing Facility beds per the Kansas Department for Aging and Disability Services (KDADS) data. This is particularly concerning as our population expects to see a rise of 208,000 seniors needing long-term health care services over the next 10 years.

Part of the reason for closures and reduced capacity can be attributed to the nursing workforce staffing crisis, while another part can be attributed to increasing costs that all Americans have faced. Despite these reasons, if we are not able to examine and correct the root cause of this crisis, we will see more facilities close, further spreading the care deserts already existing in our state.

Letter to The Honorable Xavier Becerra  
Secretary of Health and Human Services  
Re: Request to Delay Implementation of Proposed  
Payment Transparency Reporting Rule  
November 1, 2023  
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According to LeadingAge Kansas, nearly 85,000 Kansans live in areas with only one nursing and residential care provider within a 30-minute drive. They are at risk of joining the 23,000 Kansans already living in a care desert. Seniors and their families should not be forced to choose between moving to receive health care services or attempting to make do at home with loved ones.

While I appreciate CMS and the Health Resources and Services Administration's (HRSA) \$75 million investment towards tuition and scholarships for our nursing workforce, I fear it may not be enough to see the increase we need to achieve the provisions of this rule and prevent access issues. Further, my administration's concern is that this rule may have a cascading effect on the availability of nurses for KDADS to recruit and retain within our Survey, Certification and Credentialing Commission (SCCC). As of September 2023, the SCCC was short 36 surveyors, which can further impact our ability to enforce this proposed rule and keep up with the demands of the waivers and exemptions processes. I acknowledge the lenience on implementation in rural areas and the hardship exemptions outlined in the rules however, these will not be sufficient to address the foundational concerns with these proposed changes.

I share in your and CMS's mission to ensure transparency, safety, and quality care for residents of long-term care facilities, but I would respectfully request that you delay the implementation of this rule so that we can address the root problem and build a foundation that can sustain our mutual goal.

I appreciate your attention to this critical issue. Should you have any questions, you may contact my office at 877-579-6757.

Respectfully,

A handwritten signature in blue ink, appearing to read "Laura Kelly", with a stylized flourish at the end.

Laura Kelly  
Governor of Kansas