

State of Kansas
House of Representatives



REP. CHRIS CROFT
HOUSE MAJORITY LEADER

REP. DAN HAWKINS
SPEAKER OF THE HOUSE

REP. BLAKE CARPENTER
SPEAKER PRO TEM

November 9, 2023

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

Dear Administrator Brooks-LaSure:

As elected representatives for Kansans, we feel compelled to address the inadequacies outlined by the federal mandate of minimum staffing standards in nursing facilities issued from the office you oversee. Kansas is primarily rural, which brings unique challenges that were ignored when making this mandate.

The Kansas Health Institute indicated census data showed a growing aging population in the state over the last 10 years. LeadingAge Kansas data indicates by 2036 seniors 65 and older will grow by 208,000. With a significant increase in population comes an increase in the need for critical services offered by nursing home providers. Yet, despite these trends, your office under the direction of the Biden Administration, has issued a rule that will inevitably lead to reduced capacity or closures within predominantly rural areas of the state. It is irrational to believe urban areas will have the infrastructure to support not only their growing population demands but also care for the rural seniors who will transplant to the area seeking services after their rural facilities close.

Despite workforce shortages being a barrier to the mandated rule in your commissioned Abt study, you chose to propose a one-size-fits-all approach to guaranteeing quality of care. Additionally, the evidence used to support the rule-making provisions does not support your own stance. The Abt Associates 2022 Nursing Home Staffing Study showed no set number of staffing minimums guarantee the quality of care. Payroll-Based Journaling (PBJ) data can only account for the total number of hours staff are working in a day, not the specific shifts they are working. Utilizing this data to justify the 24/7 RN provision neglects the reality that some nurses may be working overlapping shifts during the daytime hours and providers who attempt to change the schedule to accommodate the rule provision may lose staff resulting in further noncompliance. Your rule is based on fallacies, not facts.

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Further, we have great concerns with a process that requires providers to obtain a waiver after failing to meet the standard they have already indicated they cannot meet. As good stewards of Kansas taxpayer dollars, we want to ensure the state general funds we are allocating to these providers go toward serving Kansans. Due to changes your agency has taken to limit providers' ability to apply for grants to improve the workforce crisis, more facilities will be cited through an exemption process leading to a substantial loss of state Medicaid dollars that will not be reinvested into our state. We question what method will you use to determine how much each state receives of that \$75 million? Even if it were equally distributed among all 50 states, only \$1.5 million would be allocated to Kansans for scholarships and tuition. We find it hard to believe \$1.5 million will be enough to solve a workforce crisis that has been building since before the pandemic.

We represent all Kansans, including the thousands living and working in rural areas relying on critical services offered by nursing facility providers. Families should not be forced to decide whether to care for a loved one at home or move them nearly two hours away for nursing facility services. Your rule will undoubtedly lead to more closures of facilities providing aging services for the right reasons- quality care for residents and their loved ones. We request you do not finalize this rule and allow each state to address individually on a state level.

Sincerely,

A handwritten signature in black ink that reads "Daniel R. Hawkins". The signature is fluid and cursive.

Daniel R. Hawkins

A handwritten signature in black ink that reads "Chris Croft". The signature is cursive and stylized.

Chris Croft

A handwritten signature in black ink that reads "Blake Carpenter". The signature is cursive and stylized.

Blake Carpenter