

United States Senate

WASHINGTON, DC 20510

September 29, 2023

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Administrator Brooks-LaSure:

We write to express concerns regarding the Centers for Medicare and Medicaid Services' (CMS) recent proposed rule establishing staffing mandates for nursing homes. In many parts of the country, America's long-term care facilities are facing severe workforce shortage issues that are harming access to critical care for our nation's seniors. With this in mind, we are deeply concerned that now is the worst possible time for the United States to establish the nation's first federal staffing mandate for long-term care facilities. We believe the rule as proposed is overly burdensome and will result in additional closures and decreased access to care. We urge you to rescind CMS' proposed rule and instead commit to working with Congress on the large number of alternate approaches to ensure the quality and safety of care in skilled nursing facilities.

We understand the importance of ensuring beneficiaries of federal health care programs have access to safe and high-quality nursing care. In fact, we share your intended goal of improving the quality of care for seniors and ensuring resident safety. However, a one-size-fits-all staffing mandate significantly undermines access to care for patients, particularly in rural communities. Instead, CMS should work with Congress and stakeholders on policy alternatives that address the severe workforce challenges in our states' underserved areas.

CMS' own "Nursing Home Staffing Study Comprehensive Report" released in June of this year highlights the disparities between different facilities in different parts of the country as well as the difficulty to implement burdensome national requirements, further emphasizing our concerns over CMS' proposed federal mandate.¹ This report also notes that current literature "does not provide a clear evidence basis for setting a minimum staffing level." While the proposed rule does attempt to address some of these disparities, we believe it falls short. For example, we are concerned by the requirement to have a Registered Nurse (RN) on site at all times being omitted from the hardship exemption and Licensed Practical Nurses (LPNs) being omitted from inclusion with RNs in the staffing ratio formula.

More broadly, the federal staffing standards established in the rule do not provide the flexibility necessary to nursing homes in light of well-known and long-standing direct care workforce challenges, especially in rural and underserved areas.² This issue is exacerbated by the

¹ <https://www.cms.gov/files/document/nursing-home-staffing-study-final-report-appendix-june-2023.pdf>

² https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2022/05/BPC-Medicare-Rural-EmerHsp_R02.pdf

fact that the health care sector is projected to have a shortage of nurses, 10 to 20 percent based on a spring 2022 estimate, in the coming years.³ If large, urban, multistate hospital corporations are having trouble hiring nurses, there is no doubt that this struggle will only be amplified for small rural nursing home providers. Many of these facilities are already expending significant effort and resources to recruit and retain clinical staff, including those facilities in the 38 states and the District of Columbia that have their own localized staff ratio requirements.

We recognize CMS as a crucial partner in identifying, mitigating, and preventing future health and safety problems in nursing homes. We stand ready to work with your agency on proposals to improve long-term care for patients. The best way to accomplish this goal is working with Congress and stakeholders to ensure any future actions do not further exacerbate the serious challenges already facing facilities across the country.

Sincerely,



Jon Tester
United States Senator



James Lankford
United States Senator



Joe Manchin III
United States Senator



Susan M. Collins
United States Senator



Kyrsten Sinema
United States Senator

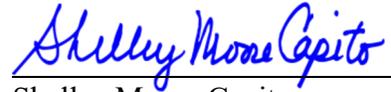


Roger W. Marshall
Roger Marshall, M.D.
United States Senator

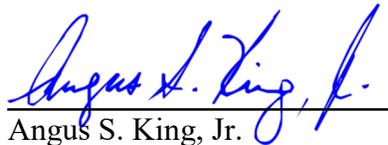
³ <https://www.mckinsey.com/industries/healthcare-systems-and-services/our-insights/assessing-the-lingering-impact-of-covid-19-on-the-nursing-workforce>



Margaret Wood Hassan
United States Senator



Shelley Moore Capito
United States Senator



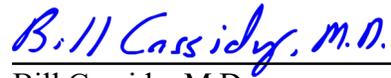
Angus S. King, Jr.
United States Senator



James E. Risch
United States Senator



Jeanne Shaheen
United States Senator



Bill Cassidy, M.D.
United States Senator



Kevin Cramer
United States Senator



Cindy Hyde-Smith
United States Senator



Roger F. Wicker
United States Senator



Marco Rubio
United States Senator



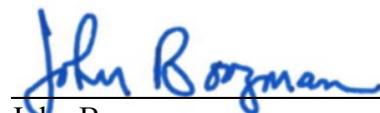
Thom Tillis
United States Senator



John Thune
United States Senator



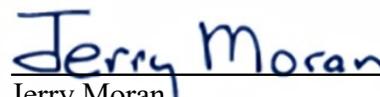
Markwayne Mullin
United States Senator



John Boozman
United States Senator



Steve Daines
United States Senator



Jerry Moran
United States Senator



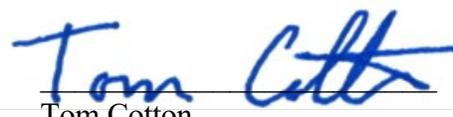
Michael S. Lee
United States Senator



M. Michael Rounds
United States Senator



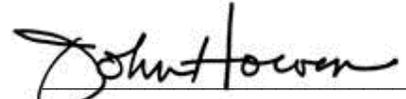
Bill Hagerty
United States Senator



Tom Cotton
United States Senator



Marsha Blackburn
United States Senator



John Hoeven
United States Senator

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 or (202) 225-2865.

Sincerely,



Sharice L. Davids
Member of Congress



To: Representative Sharice Davids, KS 3rd 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

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
Total	49

% 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%	100.0%
2. Mid 49-63%		54.5%	36.4%	9.1%	100.0%
3. Mid-High 64-75%	44.4%	33.3%		22.2%	100.0%
4. High >=76%	41.7%	50.0%		8.3%	100.0%
Total	22.4%	40.8%	24.5%	12.2%	100.0%

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
Total	129.9	40.0	169.9

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%	100.0%
Urban	65.9%	34.1%	100.0%
Total	61.2%	38.8%	100.0%

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%	100.0%
Urban	31.7%	68.3%	100.0%
Total	30.6%	69.4%	100.0%

27.3

RNs Needed

RN on Site 24 hours / 7 days a week

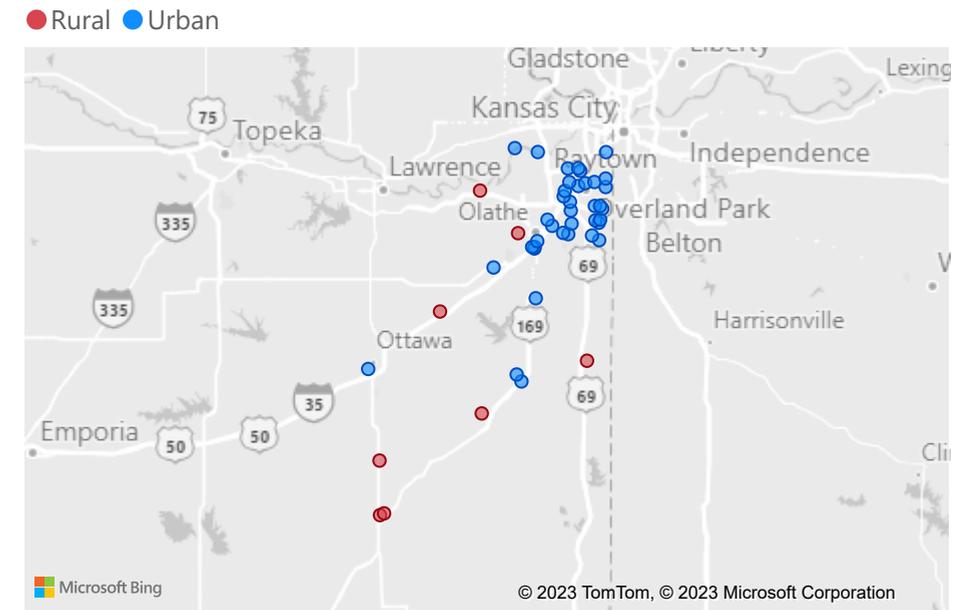
Meet RN 24/7?
 Select all
 No
 Yes

Meet Reqt?	No	Yes	Total
Rural	87.5%	12.5%	100.0%
Urban	80.5%	19.5%	100.0%
Total	81.6%	18.4%	100.0%

22.0

RNs Needed

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



Congress of the United States

Washington, DC 20515

October 20, 2023

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

Dear Secretary Becerra:

We write with significant concerns regarding the U.S. Department of Health and Human Services' proposed rule, issued on September 1, 2023, at the direction of the White House, establishing minimum staffing requirements and standards for nursing homes.¹ Finalizing this proposal would result in limited access to care for seniors, mandatory increases in state Medicaid budgets, and could most consequentially lead to widespread nursing home closures.

As you know, nursing homes are continuing to experience significant workforce shortages and financial hardship. Highlighted in the proposed rule is the fact that according to the Bureau of Labor Statistics, "there are roughly 235,900 fewer health care staff working in nursing homes and other long-term care facilities compared to March of 2020."² Instead of moving forward with a regulatory mandate that would exacerbate staffing shortages, the Centers for Medicare and Medicaid Services (CMS) should collaborate and work alongside nursing homes across the country to find innovative solutions to improve the provision of care for seniors and other vulnerable populations. This includes creating apprenticeship programs, like the temporary nurse aide waiver, as well as workforce programs to develop licensed nurses specifically for long term care, to fill gaps in this workforce and provide continued access to care for nursing home residents.

In August of 2022, CMS announced its strategy to determine minimum staffing levels would build on a decades-old 2001 CMS study titled, "*Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes*."³ CMS' proposed regulatory mandate requiring nursing homes to comply with .55 hours per resident day (HPRD) for registered nurses and 2.45 HRPD for nurse aides aligns with the recommendations outlined in the 2001 report. Under these proposed staffing minimums, nursing homes around the country would need to hire nearly 13,000 registered nurses and 76,000 nursing assistants. The

¹ Centers for Medicare & Medicaid Services: *Medicare and Medicaid Programs: Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting* ([Medicare and Medicaid Programs: Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting \(CMS 3442-P\) | CMS](#))

² Federal Register: *Medicare and Medicaid Programs: Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting* ([Federal Register :: Medicare and Medicaid Programs: Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting](#))

³ Centers for Medicare & Medicaid Services: *Centers for Medicare & Medicaid Services Staffing Study to Inform Minimum Staffing Requirements for Nursing Homes* (<https://www.cms.gov/blog/centers-medicare-medicaid-services-staffing-study-inform-minimum-staffing-requirements-nursing-homes>)

workforce needs are much greater than the projections suggest as they do not account for the future need of skilled nursing services as more Baby Boomers retire and age. This calculation assumes retention of all registered nurses and nurse aides, which we know is not realistic with expected retirements and other employment changes. The staffing mandate for nursing homes would also put added pressure on all other health care settings – acute and post-acute – that need nursing care, exacerbating shortages and recruitment challenges those industries are facing.

In addition to the HPRD requirements, the proposed rule requires registered nurses to be on site 24 hours per day, seven days per week. This disregards existing Medicare and Medicaid statutes. These statutes state that skilled nursing facilities and nursing facilities must provide 24-hour licensed nursing services, counting licensed practical nurses or registered nurses, and they also provide an explicit floor for onsite registered nurse staffing: eight hours per day, seven days per week. In fact, the CMS proposed rule completely disregards licensed practical nurses entirely, which is concerning as these licensed professionals are critical to high quality service delivery in nursing homes and should be counted within the nursing requirements of the rule.

To inform CMS about the implementation and impact of a minimum nurse staffing requirement, the agency commissioned a report that was finalized in June of 2023.⁴ This report found that quality and safety thresholds could increase a modest one percentage point while costing between \$1.5 to \$6.8 billion to fully implement. Notably, Massachusetts introduced a similar minimum staffing requirements in 2020 that subsequently led to statistically insignificant effects on quality and safety of care, offering a case study should this proposal be implemented nationally.

The proposed rule offers a “hardship exemption” for the HPRD requirement only under very limited circumstances. To qualify for a one-time waiver from the mandate, long-term care facilities would need to first be cited for noncompliance, then would need to demonstrate to state surveyors a good faith effort to hire and a “financial commitment” to hiring. The information needed to demonstrate hardship may be complex and difficult to compile for facilities that are already facing significant staffing shortages. The waiver process should not be punitive, but rather rehabilitative in supporting facilities to reach appropriate staffing levels and quality outcomes for residents.

Noncompliance with CMS’ proposed minimum staffing requirements would lead to citations for noncompliance with Medicare Conditions of Participation, potentially resulting in a variety of enforcement actions, including imposition of Civil Monetary Penalties, denial of payments for new admissions, and even termination from the Medicare program. Given these punitive measures, it is likely we will see facilities across the country be forced to deny access to seniors in need of nursing home level of care to stay in compliance with the rule, especially in rural communities with health care access challenges. CMS’ one-size-fits-all regulatory requirement for nursing homes would result in numerous unintended consequences and negatively impact their capacity to recruit and retain qualified nursing professionals at a time in which the health care industry, specifically the long-term care sector, is facing workforce shortages at unprecedented levels.

We urge you to reconsider your proposal to impose new federal staffing requirements on nursing home facilities, which would adversely hurt their ability to serve existing and prospective residents. Thank you for your consideration, and we look forward to your response.

⁴ Abt Associates: *Nursing Home Staffing Study* ([The Nursing Home Staffing Study Comprehensive Report \(kffhealthnews.org\)](https://www.kffhealthnews.org))

Sincerely,



Greg Pence
Member of Congress



Jared Golden
Member of Congress



Brett Guthrie
Member of Congress



Vern Buchanan
Member of Congress



Michelle Fischbach
Member of Congress



Chris Pappas
Member of Congress



Bill Johnson
Member of Congress



Carol D. Miller
Member of Congress



Jeff Duncan
Member of Congress



John Joyce, M.D.
Member of Congress



Michelle Steel
Member of Congress



Larry Bucshon, M.D.
Member of Congress



Troy Balderson
Member of Congress



Mariannette Miller-Meeks,
M.D.
Member of Congress



Glenn "GT" Thompson
Member of Congress



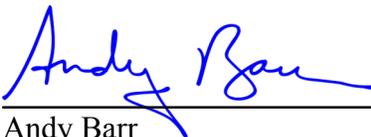
Michael C. Burgess, M.D.
Member of Congress



Garret Graves
Member of Congress



Tracey Mann
Member of Congress



Andy Barr
Member of Congress



Gregory F. Murphy, M.D.
Member of Congress



Lloyd Smucker
Member of Congress



Mike Kelly
Member of Congress



John Rose
Member of Congress



Dan Crenshaw
Member of Congress



Dusty Johnson
Member of Congress



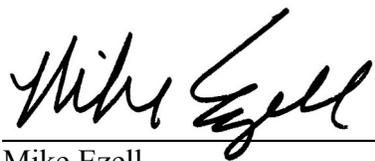
Earl L. "Buddy" Carter
Member of Congress



Bryan Steil
Member of Congress



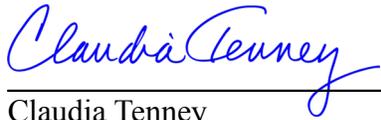
David Kustoff
Member of Congress



Mike Ezell
Member of Congress



Brad Finstad
Member of Congress



Claudia Tenney
Member of Congress



Daniel Meuser
Member of Congress



Diana Harshbarger
Member of Congress



Burgess Owens
Member of Congress



Mike Carey
Member of Congress



Darin LaHood
Member of Congress



Gus M. Bilirakis
Member of Congress



Michael Guest
Member of Congress



Michael K. Simpson
Member of Congress



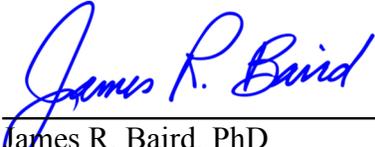
Blake D. Moore
Member of Congress



Adrian Smith
Member of Congress



Lisa C. McClain
Member of Congress



James R. Baird, PhD
Member of Congress



Austin Scott
Member of Congress



Rudy Yakym III
Member of Congress



Ryan K. Zinke
Member of Congress



James Comer
Member of Congress



Frank D. Lucas
Member of Congress



Josh Brecheen
Member of Congress



Kelly Armstrong
Member of Congress



C. Scott Franklin
Member of Congress



Ron Estes
Member of Congress



Dan Bishop
Member of Congress



Harold Rogers
Member of Congress



Mike Johnson
Member of Congress



Alex X. Mooney
Member of Congress



Jim Banks
Member of Congress



Erin Houchin
Member of Congress



H. Morgan Griffith
Member of Congress



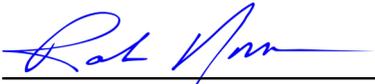
Kevin Hern
Member of Congress



Mike Bost
Member of Congress



Brian Fitzpatrick
Member of Congress



Ralph Norman
Member of Congress



Tom McClintock
Member of Congress



Lauren Boebert
Member of Congress



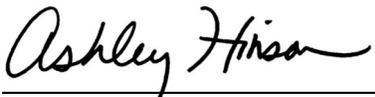
Tom Cole
Member of Congress



Robert E. Latta
Member of Congress



Matthew Rosendale, Sr.
Member of Congress



Ashley Hinson
Member of Congress



Harriet M. Hageman
Member of Congress



Pete Stauber
Member of Congress



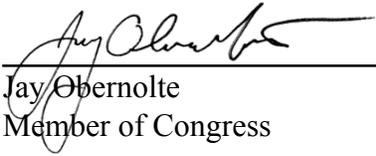
Jake LaTurner
Member of Congress



Brad R. Wenstrup, D.P.M.
Member of Congress



Clay Higgins
Member of Congress



Jay Obernolte
Member of Congress



Cliff Bentz
Member of Congress



Nicholas A. Langworthy
Member of Congress



Julia Letlow, Ph.D.
Member of Congress



Randy Feenstra
Member of Congress



John R. Moolenaar
Member of Congress



Chuck Edwards
Member of Congress



Michael Waltz
Member of Congress



August Pfluger
Member of Congress



Neal P. Dunn, M.D.
Member of Congress



John R. Curtis
Member of Congress



Barry Moore
Member of Congress



Monica De La Cruz
Member of Congress



Vicente Gonzalez
Member of Congress



Robert B. Aderholt
Member of Congress



Richard Hudson
Member of Congress

A handwritten signature in black ink, reading "Beth Van Duyne". The signature is written in a cursive style with a large initial "B".

Beth Van Duyne
Member of Congress

STATE OF KANSAS

CAPITOL BUILDING, ROOM 241 SOUTH
TOPEKA, KS 66612



PHONE: (785) 296-3232
GOVERNOR.KANSAS.GOV

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
Page 2 of 2.

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

State of Kansas
Senate



SENATOR RICK WILBORN
SENATE VICE PRESIDENT

SENATOR TY MASTERSON
SENATE PRESIDENT

SENATOR LARRY ALLEY
SENATE MAJORITY LEADER

300 SW 10th
Topeka, KS 66612

November 7, 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:

Health and Human Services has recently proposed changes to regulations that will have a significant impact on nursing home facilities in Kansas and will disproportionately impact citizens in rural communities. Omitting LPNs from being counted in the 3.0-hour minimum staffing ratio hours is an unreasonable requirement at a time when the industry is struggling to fill the many vacancies.

We have been examining these issues and collaborating with stakeholders to identify ways to recruit, educate, and retain direct service positions. However, this regulation will result in more patients being at risk when the supply of Registered Nurses does not meet the demand.

Currently, 39.67% of Kansas LPNs work in these settings. While we support the idea of a more educated workforce, the number of Registered Nurses in Kansas doesn't exist to meet the need with the proposed regulations. Without solving the underlying problem of the nursing shortage, aging service providers must continue to battle for a limited pool of qualified applicants. This situation will continue to place our state in the position of not having enough qualified medical staff to conduct the regulations set forth by your department.

Additionally, even if staffing were available, your rule would require increased funding of approximately \$58 million. Funding that isn't available under the current reimbursement rates for long-term care. This rule will lead to more facility closures in all areas of the state. The result of this rule will likely displace residents and unduly challenge families to find facilities that can adequately care for this at-risk community.

We ask that you reconsider the proposed amendments.

Sincerely,

Handwritten signature of Ty Masterson in black ink.

Ty Masterson
Senate President

Handwritten signature of Larry Alley in black ink.

Larry Alley,
Senate Majority Leader

Handwritten signature of Richard Wilborn in black ink.

Richard Wilborn
Senate Vice President

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.

State of Kansas
House of Representatives



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

STATE OF KANSAS
SENATE CHAMBER

STATE CAPITOL RM 318-E
TOPEKA, KANSAS 66612
(785) 296-3245
dinah.sykes@senate.ks.gov



10227 THEDEN CIRCLE
LENEXA, KANSAS 66220
(913) 406-0053

DINAH H. SYKES
SENATE DEMOCRATIC LEADER

November 13, 2023

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

Dear Administrator Brooks-LaSure:

As Democratic leaders in the Kansas legislature, we write to you to express our concerns with the proposed minimum staffing rule for nursing facilities your office announced on September 1, 2023. We find the intent of your rule admirable, but frankly unachievable given the current circumstances our state is facing in long-term care services.

Our rural state, like many others, saw mass waves of closures and reduced capacity exacerbated by the pandemic. With the added pressures and regulations, we saw increasing numbers of direct-service and frontline nurses leaving long-term care or the healthcare system altogether. This has left Kansas with a limited number of nurses to be employed among a wide variety of employers in the healthcare continuum.

Despite these challenges, our providers have remained committed to serving Kansas residents and their families in frontier, rural, and urban areas of the state. The legislature has been supportive of their commitment by attempting to increase state Medicaid rates through a one-time add-on allowing providers to come close to 100% cost reimbursement. We are aware of the challenges providers and residents face, and we too want to guarantee quality of care. However, issuing a top-down mandate without financial support or policy to support the provisions is not the way to do so.

Unfunded mandates will only lead to unintended consequences such as further closures, reduced capacity, displacements of residents currently receiving care, and further hardships for the sustainability of the long-term care continuum in Kansas. Our nursing homes do not operate in silos, and many of our providers offer other critical services in rural communities that could be placed in jeopardy by this rule.

STATE OF KANSAS
SENATE CHAMBER

STATE CAPITOL RM 318-E
TOPEKA, KANSAS 66612
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DINAH H. SYKES
SENATE DEMOCRATIC LEADER

We want to ensure a balance between the needs of providers and the rights of residents and believe working together to address any issues between the two is critical to a harmonious resolution. For these reasons, we urge your office to not finalize the proposed minimum staffing rule and work with individual states to address their unique needs and maintain compliance with current state laws.

A handwritten signature in cursive script, reading "Dinah H. Sykes". The ink is dark and the signature is fluid and legible.

Dinah Sykes, KS Senate Minority Leader

A handwritten signature in cursive script, reading "Vic Miller". The ink is dark and the signature is fluid and legible.

Vic Miller, KS House Minority Leader

A handwritten signature in cursive script, reading "Pat Pettey". The ink is dark and the signature is fluid and legible.

Pat Pettey, KS Senate Minority Whip

A handwritten signature in cursive script, reading "Valdenia Winn". The ink is dark and the signature is fluid and legible.

Valdenia Winn, KS House Assistant Minority Leader