

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CEDAR RAPIDS DIVISION

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State of KANSAS, *et al.*,

*Plaintiffs,*

v.

ROBERT F. KENNEDY, JR. in his official  
capacity as Secretary of the United States  
Department of Health & Human Services, *et*  
*al.*,

,

*Defendants.*

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Civil Action No. 1:24-cv-110

REPLY IN SUPPORT OF PLAINTIFFS' MOTION  
FOR SUMMARY JUDGMENT

## INTRODUCTION

CMS's response (Dkt. 148) to Plaintiffs' motion for summary judgment (Dkt. 118) is virtually identical to what appeared in CMS's cross-motion for judgment on the administrative record (Dkt. 122). And Plaintiffs have already filed a detailed response to those arguments (Dkt. 149). To avoid burdening the Court with repetitive arguments, Plaintiffs incorporate by reference those arguments and ask the Court to refer to Plaintiffs' earlier briefing as a reply to CMS's response. Additionally, both parties agree the case can be decided as a matter of law and that there are no genuine disputes of material fact that would prevent the Court's issuance of summary judgment. *See* Dkt. 148-1 at 1-2. To the extent CMS disputes Plaintiffs' facts, the disputes largely amount to disagreements over characterizations of the record, which are discussed in the parties' respective briefing.

Since the parties filed for summary judgment, a district court in the Northern District of Texas has vacated the Rule's minimum staffing requirements. *American Health Care Association, et al. v. Kennedy Jr., et al.*, No. 2:24-cv-114, 2025 WL 1032692 (N.D. Tex., April 7, 2025) ("AHCA"). As discussed more fully below, that decision is not final and its relief is narrower than what Plaintiffs have requested in their complaint and their motion for summary judgment. The Court should therefore proceed to a final judgment here in favor of Plaintiffs and vacate the Rule.

## ARGUMENT

CMS relies on the same arguments that Plaintiffs have repeatedly rebutted in their opening brief (Dkt. 118), their opposition to CMS's motion for summary judgment (Dkt. 149), and elsewhere (*see, e.g.* Dkt. 30; Dkt. 78).

### A. The 24/7 RN and HPRD requirements are unlawful

Plaintiffs have thoroughly explained the conflict between the Rule's 24/7 RN and HPRD mandates and the Medicare and Medicaid statutes. Congress set a minimum (and flexible) RN

standard and a qualitative standard for other nursing staff, with 24-hour availability “sufficient to meet resident needs.” CMS has no authority to set different standards. CMS again provides no specific authority for its contrary view: it continues to rely on the same generic “miscellaneous” and “other” provisions in different parts of the statute that Plaintiffs have fully rebutted as plausible sources of delegated authority for the Rule. *See* Dkt. 149 at 7-12; Dkt. 118-1 at 16-19.

At least one other district court has already agreed with Plaintiffs and found the Rule’s minimum staffing requirements unlawful.<sup>1</sup> In *AHCA*, the court held the 24/7 RN requirement exceeded CMS’s statutory authority. 2025 WL 1032692, at \*7 (“CMS lacks authority to issue a regulation that replaces Congress’s preferred minimum hours with its own. That is exactly what the 24/7 Requirement does.”). And it found the HPRD requirements were similarly unlawful, as they “eliminate considerations of a facility’s nursing ‘needs’ when prescribing minimum staffing standards.” *Id.* at \*10. This Court should also find the minimum staffing requirements unlawful.

#### **B. The Rule violates the major questions doctrine**

As before, CMS’s response gets the major questions doctrine wrong. *See* Dkt. 149 at 13-19. CMS merely notes major questions cases where the costs of agency action were far higher than the Rule’s \$43 billion. But it unaccountably ignores *Alabama Association of Realtors v. Department of Health & Human Services*, 594 U.S. 758 (2021) and its \$50 billion cost: only \$7 billion more than the Rule. And CMS has no explanation for important Supreme Court discussions of the major questions doctrine which indicate that \$43 billion should be considered a major question.<sup>2</sup>

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<sup>1</sup> The district court in Texas, having found the minimum staffing requirements unlawful, did not analyze the plaintiffs’ remaining claims in that case, which included claims that the Rule violated the major questions doctrine and was arbitrary and capricious. *See AHCA*, 2025 WL 1032692 at \*11.

<sup>2</sup> *See, e.g., West Virginia*, 597 U.S. at 744 (Gorsuch, J., concurring) (“[A]n agency must point to clear congressional authorization when it seeks to...require billions of dollars in spending by private persons or entities”) (cleaned up).

There is no reason to draw the major question line at \$50 billion. Recently, a district court in Rhode Island reviewed an agency decision that would cost states \$10 billion; the court approvingly cited *Biden v. Nebraska*, 600 U.S. 477, 514 (2023) in support of its conclusion that the agency’s decision to impose costs of \$10 billion was “of vast economic and political significance” which required clear authorization from Congress. *See Colorado, et al. v. U.S. Dep’t of Health and Human Servs.*, No. 1:25-cv-121, 2025 WL 1017775, at \*3 (D.R.I. Apr. 5, 2025). This Court should have no trouble finding that a \$43 billion cost, by itself, triggers the major questions doctrine.

But the Rule’s vast economic and political significance is even clearer in conjunction with its impact (forcing many noncompliant LTCs to close) and its overturning of state laws governing LTC staffing.<sup>3</sup> CMS’s failure to deny the Rule’s intrusion into an area of traditional state authority is another tacit admission that this is a major questions case.

### **C. If upheld, the Rule raises constitutional doubt about the statute**

Plaintiffs have also argued that if the Rule is authorized by statute, the statute is unconstitutional because there are effectively no boundaries on CMS’s delegated authority. *See* Dkt. 118-1 at 19-20; Dkt. 149 at 19-20. CMS’s response does not address those boundaries at all, which is a tacit admission that there are none. Indeed, CMS insists it has boundless authority, and urges that “the Court’s review of the regulation should be confined to ensuring that the minimum staffing requirements are reasonably related to the health and safety of residents.” Dkt. 148 at 5 (cleaned up). If its delegated authority permits CMS to rewrite the statute—to replace “8 hours” with “24 hours,” and “sufficient to meet resident needs” with a series of arbitrary staff-to-resident ratios—it is unbounded and unconstitutional.

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<sup>3</sup> *See West Virginia*, 596 U.S. at 744 (Gorsuch, J., concurring) (“When an agency seeks to intrude into an area that is the particular domain of state law... courts must be certain of Congress’s intent.”).

#### **D. The Rule is arbitrary and capricious**

CMS's arguments denying the Rule is arbitrary and capricious have been soundly rebutted. *See* Dkt. 118-1 at 23-32; Dkt. 149 at 22-37. Its claim that the Rule "does not represent a change in course" simply cannot be squared with its contradictory claim that it reasonably explained its decision to depart from past practice. *See* Dkt. 149 at 22 (citing *Fox Television Stations*, 566 U.S. 502, 515 (2009)).

To the extent that CMS claims it now has sufficient data, it cannot identify any direct evidence supporting the Rule's onerous, inflexible staffing mandates. Nor can it deny that it relies primarily on the rushed Abt study, which it commissioned solely to justify this rulemaking. *See* Dkt. 149 at 25-26. CMS's vague reference to unspecified literature reviews and analyses fails to provide any alternative basis for the Rule.

As to reliance interests, CMS admits it upended Congress's decision to provide flexibility to States and nursing communities allowing them to implement staffing requirements tailored to the individual needs of the residents. Plaintiffs have relied on that flexibility, while CMS ignored those interests and insisted that increased staffing will lead to better outcomes for residents. *See* Dkt. 118-1 at 26-28; Dkt. 149 at 27-30. Staggered implementation and unattainable hardship exemptions do not rectify this failure. Though CMS claims to have considered the staggering costs and workforce shortages that are major obstacles to compliance, it fails to address Plaintiffs' legal and factual arguments showing that consideration was inadequate. Dkt. 118-1 at 28-32; Dkt. 149 at 30-37.

Finally, CMS ignores Plaintiffs' arguments that the EFA is arbitrary and capricious, as well as non-severable, and thus waive any rebuttal. Dkt. 118-1 at 14, 28, 33-34.

#### **E. The entire Rule should be vacated**

CMS again insists that Plaintiffs "do not substantively challenge the Facility Assessment

[EFA] or Medicaid Institutional Payment Transparency Reporting provisions on any grounds.” Dkt. 148 at 2. This remains false. *See* Dkt. 118 at 33-35; Dkt. 149 at 39-42. In any case, the Rule is not severable: CMS continues to rely on a vague severability clause that doesn’t explain how the Rule’s provisions work separately, even though they were designed to work together. And it never denies that the EFA and transparency reporting provisions would have been promulgated independently of the staffing mandates.

#### F. Vacatur in Texas does not moot any aspect of this case

A final judgment on all counts, in this now fully-briefed case, is appropriate in spite of AHCA’s vacatur of the Rule’s staffing mandates. The mootness standard considers whether “it is impossible for a court to grant any effectual relief whatever to the prevailing party.” *Chafin v. Chafin*, 568 U.S. 165, 166 (2013). Plaintiffs can still obtain meaningful and lasting relief through this litigation, which is not certain to occur absent a favorable ruling by this Court.

First, Plaintiffs’ challenge to the Rule encompasses more than just the minimum staffing requirements which have been vacated. This Court can provide additional relief to Plaintiffs by vacating the Rule’s EFA and Medicaid transparency reporting requirements as well.

Second, the Rule’s partial vacatur is not final; it may be appealed, even by intervenors. Until that case becomes final, Plaintiffs are not assured of the Rule’s vacatur. *See, e.g., Mausolf v. Babbitt*, 125 F.3d 661, 666 (8th Cir. 1997) (recognizing a prospective intervenor’s ability to file a protective notice of appeal). Accordingly, the non-final judgment in the Northern District of Texas does not moot this case.

#### CONCLUSION

For the foregoing reasons, Plaintiffs move this Court to grant Plaintiffs’ motion for Summary Judgment, declare the Rule unlawful, and vacate the Rule.

Respectfully submitted,

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