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

STATE OF KANSAS, et al., *Plaintiffs*, v. XAVIER BECERRA, in his official capacity as Secretary of the United States Department of Health and Human Services, et al., *Defendants*.	Civil Action No. 1:24-cv-00110-LTS-KEM

RESPONSE TO DEFENDANTS' MOTION FOR ENTRY OF SCHEDULING ORDER, OR, IN THE ALTERNATIVE, CONSENT MOTION FOR BRIEFING SCHEDULE ON PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Defendants' motion for entry of a scheduling order for expedited summary judgment briefing is premised on their erroneous and unsupported claim that Plaintiffs are not suffering irreparable harm from the Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting Rule (the "Final Rule"), which is the subject of Plaintiffs' legal challenge. As a matter of professional courtesy, Plaintiffs are willing to extend the deadline for Defendants' response to their motion for preliminary injunction from November 5 until November 21, with the parties' briefings fully completed by Thanksgiving, given defense counsel's representations regarding their existing professional obligations and personal conflicts. Plaintiffs cannot agree, however, to forego consideration of their motion entirely and instead to adopt a summary-judgment schedule that would not see briefing completed until January 31, 2025.

Defendants are flat wrong that "Plaintiffs will … suffer no prejudice if the Court were to

proceed directly to expedited summary judgment briefing via the schedule proposed by Defendants" because the 24/7 Registered Nurse requirement and the Hours Per Resident Day requirements will not be fully in force for two to five years. Dkt. 46 at 3. Plaintiffs submitted substantial evidence and argument in their motion for a preliminary injunction describing the harm that they are currently experiencing as a result of these requirements as well as the Enhanced Facility Assessment requirement that is already fully in force *today*. Dkt. 30. Put simply, many long-term care facilities, including those operated and represented by Plaintiffs, are forced to incur higher staffing and recruiting costs now in order to comply with the Final Rule because of severe and entrenched workforce shortages in the healthcare industry. *Id.; See also, e.g.*, Dkt. 30-22 (Andrews Decl.) ¶ 11; Dkt. 30-10 (Van Ree Decl.) ¶ 9; Dkt. 30-12 (Ciborowski Decl.) ¶ 6; Dkt. 30-20 (South Decl.) ¶ 4. Further, the Final Rule's Enhanced Facility Assessment requirement, which was implemented on August 8, 2024, requires providers to conduct a comprehensive evaluation of their facility, residents, staff, and resident families to determine staffing and other needs and unfortunately contains a number of vague requirements. The Enhanced Facility Assessment imposes significant administrative burdens and compliance obligations that are imposing thousands of dollars of costs and misdirecting staff time from direct patient care. Dkt. 30; *see also, e.g.*, Dkt. 30-2 (Charron Decl.) ¶ 10; Dkt. 30-14 (Thurlow Decl.) ¶ 7; Dkt. 30-25 (Porter Decl.) ¶ 9; Dkt. 30-24 (Mains Decl.) ¶ 4.

More fundamentally, Defendants' motion for a scheduling motion is not the proper avenue for judging whether Plaintiffs are suffering irreparable harm. The only proper avenue is through adjudication of Plaintiffs' motion for a preliminary injunction, which is pending before this Court. It would be improper to proceed directly to summary judgment based on Defendants' representations about Plaintiffs' harm without adjudicating Plaintiffs' motion first.

Plaintiffs' respectfully ask the Court to deny Defendants' motion for entry of a scheduling order and instead to approve and enter the briefing schedule the parties mutually agree upon for Plaintiffs' motion for preliminary injunction.

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Respectfully submitted,

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