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House Health and Human Services

Proponent: House Bill 2249

Addressing Unexpected Interpretations of Statutes for the Rural Emergency Hospital (REH) Model

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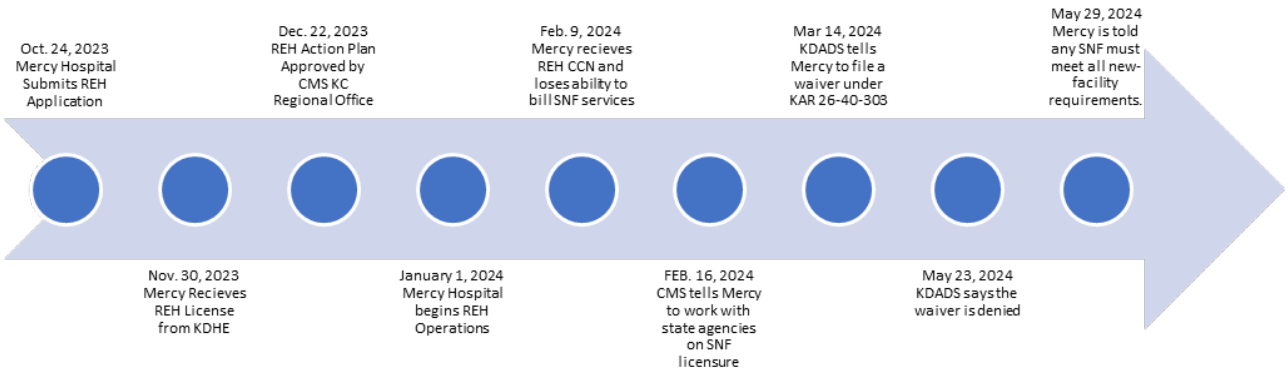
Mercy Hospital appreciates the opportunity to share our experience with the House Health and Human Services Committee to support the health and wellbeing of Kansans. We are a Rural Emergency Hospital staffed by 75 individuals to meet the healthcare needs of around 6000 patients in McPherson, Marion, and Harvey counties. Mercy has been licensed as a hospital for 80 years and provided skilled nursing services for many of those years. A recent determination by Kansas's licensing agencies has closed that door for us presently and we would like to respectfully share our concern with the far-reaching consequences of this narrow agency interpretation.

In a previous Bethell Committee hearing, the committee recommended modifications to KDADS policies to allow greater flexibility in the licensure of skilled nursing facilities and keep open more long-term care beds. We appreciate the concern of this committee regarding this issue. Skilled bed closure leads to longer stays in acute hospitals and impedes access to care for the most vulnerable across our state. We feel that Rural Emergency Hospitals have an important role to play in helping to meet this need for skilled nursing and Mercy Hospital is concerned that the state licensing agencies, namely Kansas Department of Health and Environment (KDHE) and Kansas Department for Aging and Disability Services (KDADS) are making it unnecessarily challenging for REH facilities to open skilled nursing units to meet this need.



On January 1, 2024, Mercy Hospital converted to the new hospital designation known as the Rural Emergency Hospital (REH). Currently there are 3 REH facilities in Kansas with others considering this new model, which brings financial stability through a consistent monthly payment to help with operating costs. The REH model should be of interest to the this

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committee as Medicare skilled nursing beds are one service REH facilities can offer to their communities following conversion. Mercy Hospital intended to continue operating a distinct part skilled nursing unit as allowed under the REH legislation found under Subpart E of 42 Code of Federal Regulations (CFR) Part 485.

The entire process from the REH application until we got a final answer from the state agencies took over seven months. During this time Mercy Hospital provided skilled nursing care in good faith. In our communications with the state, KDHE and KDADS acknowledged that Mercy had not previously been licensed as an adult care home despite providing the same services for many years under the umbrella of the hospital licensure. We were encouraged to submit a waiver request to KDADS Secretary Laura Howard, to be surveyed as an existing facility. After months of attempting to do all that had been asked of us by CMS and the state, we were told our waiver was denied due to the technical interpretation of our facility previously being licensed as a hospital-based skilled nursing facility rather than an adult care home. Of note, the services we've been offering for the last 51 years in our skilled unit are consistent with those offered through the adult care home licensure.

Due to the refusal of KDHE to license the skilled unit and the denial of our request for a waiver under KDADS, we were unable to bill for any of the SNF services, an amount that exceeds $450,000. In order to meet the new facility regulations, which was the only option left to us after KDHE and KDADS had both declined to work with us on licensure, we would have been forced to spend at least $2.5 million dollars to meet the physical space requirements. It does not take a CPA to determine that Mercy Hospital had no possible way of coming up with that amount to get a few skilled beds licensed. The entire purpose of the REH designation to retain necessary services in a community that otherwise could not afford to keep their hospital.

In order to not jeopardize the existing REH designation, the hospital board voted to close the skilled unit in late May, 2024. This impacted a number of patients who had already been referred to us for care and several employees had to be laid off. Two acute care hospitals were also impacted, both of which Mercy had transfer agreements with to accept skilled patients. There are many elderly in our area who benefit from 2-3 weeks of skilled nursing care following a hospital admission and area long-term care homes are often unable to accept these short-term skilled patients. The closure directly impacted care for 37 patients in only 5 months. If this number was annualized, at least 90 patients in our county will have increased challenges accessing the care they need to continue their lives.

Many other facilities across the state could benefit from the federal REH reimbursement to retain essential emergency care. The legislative intent in Kansas is not only to allow but even encourage REH facilities to operate. Many of our hospitals were built prior to 2011 meaning they will be unable to meet the new facility requirements without a waiver. The interpretation and conclusion arrived at by KDHE and KDADS is in direct conflict with the legislative intent of the REH statutes. Skilled nursing services could also be preserved in these communities, but the current restrictive interpretation by the state agencies is discouraging other hospitals from moving toward the REH model because of the additional services that would be lost.

We hope that this committee will recommend House Bill 2249 favorable for passage.

Aaron J. Herbel
Administrator, Mercy Hospital Inc.