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SUBCOMMITTEE HEARING ON IMPACT OF PREDATORS IN LONG-TERM CARE ON SMALL BUSINESS OPERATORS

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UNITED STATES HOUSE OF REPRESENTATIVES

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SUBCOMMITTEE HEARING ON THE IMPACT OF PREDATORS IN LONG-TERM CARE ON SMALL BUSINESS OPERATORS

Wednesday, July 23, 2008

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:00 a.m., in Room 1539 Longworth House Office Building, Hon. Jason Altmire [chairman of the Subcommittee] presiding.

Present: Representatives Altmire and Fallin.

Chairman ALTMIRE. Call the hearing to order.

OPENING STATEMENT OF CHAIRMAN ALTMIRE

This hearing on sexual predators in nursing homes is now called to order.

To put a loved one in a nursing home is never an easy one to make. For most it is emotionally fraught and painstaking process, but once a selection has been made, most families take comfort in knowing that their loved one will be well cared for and looked after.

For America's elderly and impaired, nursing homes have historically been places of security, and yet for many residents that is no longer the case. As a result of insufficient data and conflicting regulations, sex offenders have managed to infiltrate many of our country's nursing homes, and today millions of our most vulnerable citizens remain at risk.

In this morning's hearing we will discuss the threat that sexual predators pose not only to our elderly, but also to the small health care providers that protect them. This troubling issue is of particular concern to our Committee given that the overwhelming majority of nursing homes are also small businesses. According to a 2006 GAO report, close to three percent of nursing homes are now harboring sex offenders, and for these people, advancing age is of little hindrance.

In fact, the belief that older sexual predators are harmless is a dangerous misconception. Studies have shown that sex offenders continue to be violent well past middle age.

It is also worth noting that not all nursing home residents are elderly. The truth is that these facilities are often home to younger people with serious mental and physical handicaps. These younger residents can be both victims and perpetrators of nursing home violence.

The question is: how did these predators break into our long-term facilities? This is at least partially the result of unreliable detection systems. While the National Sex Offender Registry attempts to name all convicted sex offenders, there are notable holes in the database. For one, the registry fails to include predators that were convicted or released from prison prior to its 1996 inception.

In addition to this problem, recent offenders often fail to self-identify and, therefore, cannot be added to the registry at all.

As a result of these two system flaws, GAO believes that the registry under counts sexual predators by nearly 60 percent. Given the database's limited reach, it is reasonable to assume that nursing homes may house more sexual offenders than the three percent originally thought.

A tangle of conflicting rules and regulations have made it all but impossible for facilities to address their problems with sex offenders. Small health care providers are now governed by some 70 pages of fine print in the Code of Federal Regulations. As a result, the system is a challenge to navigate. This is particularly true when it comes to reconciling safety policies with privacy concerns.

Once a sexual predator has been identified, it is often difficult for a facility to act on that information. Under the Health Insurance Portability and Accountability Act, commonly called HIPAA, for example, sharing information about prior convictions can in some cases be considered a privacy violation. And, in fact, nursing home staff and residents' families are rarely informed of the status of other residents' offender status.

In an attempt to fix this broken system, one state is already moving forward. Following a series of incidences in Oklahoma nursing homes, the state legislature passed a bill to create separate facilities for sex offenders. In doing so, they hoped to attack this issue head on and set a precedent that can be a model nationwide.

Today we will discuss that particular piece of legislation and look for other potential solutions to this problem. Nursing homes have traditionally been a safe haven for America's elderly and disabled, and it is important that we do everything in our power to keep them that way.

With that I would like to thank all of the witnesses in advance for being here and turn it over to my good friend, the Ranking Member, Ms. Fallin, from Oklahoma for her opening statement. And I would say that she deserves the credit for this hearing. This is something that Oklahoma, her home State, has taken the lead on. This was her idea to put this hearing together. I thank her for her leadership on this, and would turn it over to her at this time.

Ms. FALLIN. Thank you, Mr. Chairman.

OPENING STATEMENT OF RANKING MEMBER FALLIN

I appreciate your very kind words, but more importantly, I appreciate your assistance in putting this hearing together and allowing us the opportunity to come together to discuss a very important topic.

And I will say that I am very proud of the State of Oklahoma and our legislature and our governor in working together in a bipartisan manner to tackle one of our state's and one of our nation's

most important issues, and that is protecting our seniors and those who are infirm in long-term care or nursing homes.

And so thank you to all of our panelists who have joined us today and our expert witnesses. I thank you and your Committee and all they have done to put this together, along with my staff, who I know has worked very, very hard.

As has been mentioned, we are here today to discuss the impact of predators on long-term care and small business operators. Most of our nursing homes and our long-term care facilities as small businesses, and thus, that is why you are in front of the Small Business Committee. We wanted to find an angle to get you here so that we could talk about this important issue.

The purpose is to examine the impact and the placement of criminals and sexual predators on the operations of small businesses that have long-term care facilities, and this is a very important issue because it affects many of our parents, our grandparents, our aunts, our uncle, our friends across our country.

Federal law and regulations are designed to insure that residents in nursing homes have certain basic rights, including to be free of physical harm and abuse. These rights frequently intersect with the placement of individuals in nursing homes who have a record of physical assaults, including sexual predators. Seniors residing in assisted living facilities are some of the most vulnerable of our citizens. Any time their safety or their health is threatened, it is both concerning and alarming.

As someone who has had a mother, and I will even say two grandmothers, all in the same facility at the same time, in a nursing home in my home town where Representative Kris Steele represents in Tecumseh, Oklahoma, I have tremendous respect and tremendous admiration for the services that the nursing home, Sunset Estates, provided to my relatives, and I just want to say up front that nursing homes and long-term care facilities deserve our respect as we are discussing this, and they have a very special job and it takes a very special person to have a job in a long-term care facility or a nursing home to care for the elderly and the infirm.

But in some instances, however, these facilities and their staff can be unaware that their could be predators living in their facility or even without the means to insure the safety of their residents. The rare cases of sexual assault and abuse have been documented in these facilities, and they are particularly abhorrent.

I am having this hearing this week to investigate both the scope of the problem and even possible roles that the federal government might play to help eliminate it, and I sure am looking forward to hearing from our nursing home representative, Mr. Coble, today who I know is just as interested in this topic as we are in taking care of our elderly and infirm, and I know that he wants, along with his industry, to guarantee the safety of his employees, the safety of his patients and the seniors, and even for the families who are visiting facilities.

I would like to extend a very special welcome and thank you to all of our witnesses who have traveled a long way to join us here today and spend their time to provide your expertise, and as I mentioned, I would especially like to welcome our state representative, Kris Steele, who is the authority of the Oklahoma legislation, who

held many hearings in our state, listened to all sides, all parties involved in this very important issue, and I know brought industry together along with families, along with patient advocates, and the legislators and, of course, the executive branch with our governor to pass this significant, first time, model legislation in our nation to be able to separate out sexual predators and have some options for states to be able to look at that.

And so I appreciate you coming today. I want to also say a special welcome to Mr. Coble, who is representing the health care nursing home industry. We appreciate him coming today. I told him, you know, our purpose today is not to knock around nursing homes and long-term care facilities, but to work with you and to do the best we can to create a safe environment because we do appreciate and respect the great service that you provide in our nation. He has been a long time owner and operator of nine long-term care facilities.

And then Wes Bledsoe with a perfect cause has started this crusade many, many years ago, has been around the State of Oklahoma for a long time, lobbied me when I was lieutenant governor of Oklahoma on this particular issue, and I know has worked with our legislators. So, Wes, thank you for all that you do.

He has tremendous documentation on this subject across the whole nation, not just in our state, but he has done a lot of research. It has personally affected him and his family.

And then I want to also thank Sandra Banning who has joined us here today, who lost her mother as a victim of sexual assault in Florida in a nursing home, and I know this is a very important issue for you and you're very passionate about it.

She has been seen on national television giving information about how important this is that we try and work together to do what we can for our seniors and long-term care people.

And then, Mr. McDonough, I have not had a chance to meet you yet, but we welcome you, and I appreciate you coming today to lend your expertise and thank you for being here.

And just welcome to our committee. We know that your information will be extremely helpful.

I want to just say a couple things. I don't want to go too long here, but according to the most recent compilation of statistics, the Center for Medicare and Medicaid Services estimate that there were 15,762 nursing home facilities in the United States with 1.7 million beds and slightly more than 46 percent of the nursing home facilities in the United States are independent businesses and not associated with another nursing home. Over two-thirds are operated for a for-profit basis, and of those, approximately 81 percent had revenue under $10 million.

In short, our nursing homes are highly localized, mostly small business, and no enterprise controls more than five percent of the beds in the industries, and nursing homes, of course, play a critical role in providing the care for Americans who are physically or mentally unable to take care of themselves and do not have a loved one who can help them.

Federal regulations established the rights of nursing home residents, which include the right to be free from physical abuse, in-

cluding sexual abuse, and to reside in an environment that maintains their dignity and quality of life.

Now, as a condition, Medicare and Medicaid participation nursing homes and long-term care facilities must report incidents of abuse according to state requirements. However, nursing homes and long-term care homes face divergent and conflicting federal laws that make it difficult for them to satisfy the multiple mandates that are put upon them.

Depending upon state regulations, many long-term care facilities and their residents may not be aware that there are residents who are offenders. Though all sex offenders are required to register by the National Sex Offender Registry, 25 percent of them never do register, and the extent to which states require and have laws that apply to sex offenders registering and reporting to the long-term care facilities greatly varies.

When facility residents are known offenders, differing interpretations exist among the states themselves and the industry and even federal officials whether to disclose the information, and the Chairman mentioned that a minute ago, that it could violate federal and state privacy laws.

But in some instances, long-term care facilities are not always notified when individuals with prior convictions enter, and the assessment tools for these facilities to determine the health care needs of the residents typically do not gather information about prior convictions. And so in addition to that, there is no federal law to notify a long-term care facility of a sex offender who has been placed in their facility, and that is one of our main concerns.

So we in Congress must look at federal law to insure that there is a health environment for long-term care residents, one that is free from violence and abuse to a fellow resident, and it is important to make sure that sexual predator data is accurate and available to nursing homes and their families so that we can assure that they will be protected in these facilities.

So thank you so much for joining us here today. We are looking forward to your testimony, and thank you, Mr. Chairman.

Chairman ALTMIRE. We will now move into the testimony from the witnesses. We will introduce formally each of you one at a time. Ms. Fallin will introduce her four witnesses. I will introduce Mr. McDonough.

Before each of you go, I want to explain the five-minute rule. Many of you, I am sure, have testified before. You will have five minutes for your testimony. There will be a green light for the first four minutes. When you see the light turn yellow, that means you have one minute remaining. If you could, start to summarize. The red light means your five minutes is up, and so please conclude your remarks at that time.

At this point I will turn it over to Ms. Fallin to introduce Representative Steele.

Ms. FALLIN. Thank you, Mr. Chairman.

Kris Steele is our state representative from Oklahoma, author of the law. He represents the 26th District. He has been a member of the House since 2001. He is a member of the Public Health Committee, Veterans Subcommittee, Human Services Committee, and serves as the chair of the Health Subcommittee in the legislature.

He was very instrumental in passing this bill which will establish separate and secure long-term care health facilities for violent and sexual offenders.

He has a Bachelor's degree in religion and a Master's and also is Associate Minister with Wesley United Methodist Church in Shawnee, Oklahoma.

And we are glad to have you here. Thank you for coming.

STATEMENT OF REPRESENTATIVE KRIS STEELE, DISTRICT 26, OKLAHOMA HOUSE OF REPRESENTATIVES

Mr. STEELE. Thank you very much.

Well, good morning. I would, first of all, like to say thank you to Congresswoman Fallin, Mr. Chairman, and members of the Committee on Small Business. It is, indeed, an honor and a privilege to participate in this discussion with such a distinguished group of individuals.

Greetings from the great State of Oklahoma.

I am here today to talk about the impact of predators in long-term care facilities on small business operators. Let me begin by saying that protecting senior adults, especially those who are vulnerable, should be a primary function and a top priority of government. This year the Oklahoma legislature enacted a proactive measure intended to reduce the risk of abuse and provide appropriate safeguards for seniors living in nursing homes.

A growing number of registered sex offenders sparked a discussion of where to place those individuals who have served their time of incarceration and yet are no longer capable of independent living. An in-depth study on this issue resulted in the creation of House Bill 2407, which directs the Department of Health to request bids from the private sector for the operation of a stand alone, specialized, long-term care facility that will house elderly sex offenders, registered sex offenders.

The request for proposal will also set forth certain specifications to designate the heightened security measures necessary to protect the public and the residents of the said facility. According to the Oklahoma Department of Corrections, an estimated 2,450 inmates convicted of sex crimes or violent crimes will be released from prison in Oklahoma in the next ten years. Twenty-six percent of these individuals will be age 51 or over and potentially in need of long-term care.

Numerous studies confirm that certain sex offenders are highly resistent to rehabilitation. Registered sex offenders living in nursing homes can create a dangerous environment for the other residents in the home. It is estimated that approximately 30 individuals listed on the Oklahoma sex offender registry currently reside in nursing homes today.

In 2005, Oklahoma passed a law requiring nursing homes to post public notifications when a registered sex offender is admitted. This measure also directed the Department of Corrections of notify local law enforcement entities about the location of sex offenders residing in nursing homes within their community.

However, because of low staff levels and a short supply of security guards, some long-term care operators have experienced dif-

ficulty in properly monitoring sex offenders residing in their facilities.

Federal regulations also prevent nursing homes from restraining residents except in very rare circumstances. Offenders living in nursing homes also present a challenge for small businesses. Knowing an offender is living in a particular facility creates a sense of uneasiness, a sense of unrest, and a sense of uncertainty for family, loved ones, and the other residents. The perception is that no one is safe in a home with an offender. Yet federal law requires that states pay for long-term care services for those individuals who are Medicaid and Medicare eligible regardless of whether or not they're convicted felons.

An interim study conducted in the fall of 2007 resulted in nursing home officials encouraging lawmakers to prevent those convicted of sex crimes from being placed in with the general population. In addition, advocate groups, such as AARP and others, expressed support for the establishment of a separate facility for registered offenders in need of long-term care.

By encouraging the private sector to establish a nursing home with additional security measures for registered offenders, it is the belief of our state that better protections would be afforded to the aging population while meeting the needs of those who have served their debt to society yet remain at risk of reoffending.

Protecting our senior adults, again, should be a primary responsibility and priority of government. Our goal should be focused on creating safe environments so that our senior adults can live the latter part of their lives free from the fear of harassment or assault. Implementing appropriate safeguards for the elderly is imperative in making this goal a reality.

Again, thank you for the opportunity to address you about this topic today.

[The prepared statement of Rep.Steele can be found in the appendis at page 29.]

Ms. FALLIN. Thank you so much Representative Steele.

Our next witness is Ms. Banning, and she is a mother and a victim of sexual assault. I am sorry. Her mother was a victim of sexual assault in a Jacksonville, Florida nursing home. She was featured on the Today Show broadcast in April as an advocate for nursing home resident protection from sexual offenders.

She has also appeared on CBS Evening News along with other media from around the State of Florida. She is serving as the medical staff manager for the U.S. Navy Medicine Support Command in her capacity which she has had for 15 years and has been a government employee for over 28 years.

And we welcome you and thank you for coming to share your very personal story.

STATEMENT OF SANDRA BANNING, JACKSONVILLE, FLORIDA

Ms. BANNING. Thank you, Congresswoman Fallin, Chairman Altmire, distinguished members. I have never addressed such an august body before. So if my lips tremble, please forgive me.

July 23rd, 2008, today. July 23rd, 2002, six years ago today, Ivy Edwards took his wheelchair into my mother's room. He placed

that wheelchair under the handle of her door, turned it sideways so that he couldn't be disturbed. He climbed into bed with my mother, and he raped her.

I received a call that night from the nursing home staff and said, "Ms. Banning, we caught a man in bed with your mother, but he was just lying there. Nothing was going on. She's asleep. Do you want us to send her to the Sexual Assault Response Center?"

I said, "Are you sure nothing happened?"

They said, "Yes, he was just lying there."

I said, "For God's sakes, don't scare her to death. No, don't wake her up."

The next morning at work, ten o'clock, I received a call from the social worker from the same nursing home who said, "Ms. Banning, more occurred last night than we originally told you, and we're going to have to send your mother to the Sexual Assault Response Center."

I said, "You're not sending her anywhere till I get there."

So when I got there, I was met by my mother, by the police, by the members of the staff, and my mother looked at me and said, "Hi."

And I said, "Hi, Mamma." I said, "Do you know why I'm here?"

And she said, "For a visit?"

And I said, "No." I said, "Mamma, last night you were raped."

My mother's expression was, "Oh, my God." My worst fear was realized. I placed my mother in a home for care so that she would be safe because in her own home she walked the streets at night, and I would say, "Mamma, you're going to get raped if you walk the streets at night."

And she'd say, "Oh, Sandra, who'd rape an old woman?"

Ivy Edwards would. Ivy Edwards was arrested at 2:30 that morning. The nursing home bagged my mother's clothes, as they termed it. They put everything in for evidence. Ivy Edwards was taken to the police before I was ever called to be told that she had been raped. When Ivy Edwards was arrested, it was his 59th arrest. He had been arrested since the 1940s. Among them sexual assault, child molestation, burglary, heinous crimes, but the court system placed Ivy Edwards in the nursing home with my mother from a homeless shelter because he was a danger to society and others.

No one, not my mother, not her family, not her daughter, should have to hold her hand while she undergoes sexual assault examination and watch the tears stream out her face because someone had taken from her what she did not give voluntarily.

My mother was married to my father for 23 years. To the best of my knowledge, no one ever touched my mother except my father until Ivy Edwards took control. So what I ask is that Congress take steps to put in place a regulation, a law, some sort of guarantee that your mother, your father, your brother, your sister, yourself will not be out there and placed in a home with another Ivy Edwards.

We have to make a change. We have to protect those that cannot protect themselves. We protect the children, but when you look at our nursing home residents, they are two, three, four, five years old in their mind. So let's protect them, too.

Thank you so much for the opportunity to address. I appreciate, and I hope so much that we can make some changes.

[The prepared statement of Ms. Banning can be found in the appendis at page 31.]

Ms. FALLIN. Thank you, Ms. Banning. We appreciate your sharing such a very personal story with us, and we will use what is meant for evil for good here.

Now it is my pleasure to welcome Wes Bledsoe, who has been a very dedicated founder of a group called the Perfect Cause, which is a citizen advocacy organization. He has been very tireless in his work that he has begun on the disabled and elderly after the death of his own grandmother in May of 2000 at Eunice Allen. He uncovered her nursing home's attempt to cover up the negligent acts that led to her death and has since exposed patterns of some abuse and neglect that have been in nursing home for long-term care residents and has been a very outspoken person on this particular issue.

And, Wes, we appreciate all of your research and your work and appreciate your coming today to give testimony.

STATEMENT OF WES BLEDSOE, FOUNDER AND CITIZENS' ADVOCATE, A PERFECT CAUSE

Mr. BLEDSOE. Thank you, Congresswoman, and thank you, Mr. Chairman, members of the Committee and staff. Thank you for this opportunity to talk about the impact of predators in long-term care facilities and small business operators.

Predators in nursing homes are bad for business. Much like the dead canary in a mine, it is a signal of invisible danger that requires immediate action. So, too, do predators in nursing home.

I have a lot of information that I can share with you today, and so I would like to just get down to key bullet points and hopefully you can ask questions that I can provide more detail to you as we move forward.

What is this about? It is about the delivery of a product, good quality care in nursing home, which is mandated by federal legislation, by state legislation across this country.

What we are talking about are rapes, sexual assaults, physical assaults, and even murders committed by violent and sexual offenders who reside as residents in long-term care facilities. So far we have documented over 60 of these crimes committed by these offenders against residents, female as well as male, staff, and even one three year old little girl who was visiting her great grandfather in a Richardson, Texas nursing home.

What are the types of offenders? And we have mentioned registered sex offenders as a problem, but there are other types of offenders we have key concerns about, and those offenders include inmates, parolees, violent offenders found incompetent to stand trial.

Mr. Chairman, as you pointed out, it is not just registered sex offenders. There are many sex offenders who are not required to register. They were grandfathered out before the registration laws were enacted. And there is also registered sex offenders who do not have to register for life.

We also have convicted felons, and then we have a group of residents who assault others in long-term care facilities but were never charged or prosecuted because either they or their victim are of diminished capacity.

Who places these offenders in long-term care facilities? District court judges, county sheriffs, adult protective services organizations, Departments of Corrections, and sometimes they are agencies to find housing for offenders being released from Department of Corrections facilities, as well as individual offenders can admit themselves or their families admit them into these facilities.

We have heard all kinds of justification which we refer to as fairy tales used by officials to justify the placement of these residents in facilities. We hear that they are all old. Not true. Much like the GAO report has documented and the reports that we have also conducted, over half of these offenders are under 65 years of age. We found 19 year old registered sex offenders living as residents in nursing homes.

Old offenders do not pose a threat. Ivy Edwards is one of those examples. There are other examples where elderly offenders do absolutely pose a threat.

They are incapacitated. They are in wheelchairs. They cannot harm anybody. Again, not true. Ivy Edwards was in a wheelchair and other offenders, bilateral amputees, those with partially amputated feet have also raped and assaulted fellow residents in long-term care facilities.

They were told that child molesters are safe because they don't pose a threat to those old people. Again, documented cases that we have provided to this Committee through court records, police records and media reports show, again, that that is absolutely false.

Nursing homes are capable of handling these offenders. There is not any training for nursing home staff on how to deal with these criminal offenders.

Other prior offenses are minor or these crimes happened long ago. Not true. Again, most of these crimes have been committed within the last 14 years. We have found these offenders living in long-term care facilities. And the crimes, the crimes they were committed for were not out urinating in public behind a bush or in the alley. These crimes are rape, assault, and murder.

These offenders have paid their debt to society. We have heard that a lot. We have documented cases where offenders were sent directly to nursing homes and other long-term care facilities without ever going to a Department of Corrections Facility. They went from jail conviction to a nursing home, and even in documents where they said they pose a significant threat to the safety of themselves and other.

What can we do? We have several recommendations I would like to respond to you during the question period, and I can share those recommendations with you.

Thank you for this opportunity to come forward. I hope tonight that you will give thought to what is happening to our residents and what happened to Sandy Banning's mother.

Thank you very much for this opportunity.

[The prepared statement of Mr. Bledsoe can be found in the appendix at page 36.]

Ms. FALLIN. Thank you, Mr. Bledsoe. We appreciate you coming today.

And now I would like to introduce Mr. Tom Coble, who is the founder and CEO of Health Care Management Company of Oklahoma, which specializes in creating long-term care based integrated health care delivery systems. HMC partners with organizations to evaluate, develop and operate Medicare Advantage special needs plans for institutional, home, and community based health plans.

He also owns and operates eight skilled nursing facilities, an assisted living facility, and a rehabilitation company, and is the president of the Oklahoma Association of Health Care Providers, and we appreciate you joining us here today. Welcome.

STATEMENT OF TOM COBLE, PRESIDENT, ELMBROOK MANAGEMENT COMPANY ON BEHALF OF THE AMERICAN HEALTH CARE ASSOCIATION

Mr. COBLE. Thank you. Thank you, Chairman Altmire, Ranking Member Fallin, and members of this Subcommittee.

I am grateful for the opportunity to be with you here today to offer our profession's perspective on the very difficult and complex issue of sex offenders in our nursing facilities.

I am honored to be here today representing the American Health Care Association. Americans are living longer, and our nation's aging population is growing. Many of these individuals have medical and cognitive conditions which require care in a nursing facility. Currently more than three million American each year rely on the care and services delivered in one of the nation's nearly 16,000 nursing facilities.

The forecast for the demand for nursing care is alarming. A March 2008 report from the National Investment Center for Senior Housing and Care Industry indicates that demand for long-term care services will more than double by 2040.

Even with this high demand and rapidly growing need of the nation's aging population, nursing homes have continued to improve quality. I am proud of the efforts and initiatives advanced by the association that I represent today and seek to enhance improved quality of care and services provided in our nation's nursing facilities each day.

I am here today to discuss the impact of predators in long-term care on small business operators. Reported problems involving sex offenders have been rare, but any incident is unacceptable, especially given the age and infirmity of those involved. Some have stated that there is a simple or easy solution to this very complex issue, but unfortunately that is just not the case.

Providing long-term care and other health services for those who have any type of criminal past is a critical societal issue. Any solution must encompass not only health care providers and their patients, but also law enforcement and federal and state agencies.

The basic question seems to be what and whose ethical and legal obligation it is to insure that individuals who have paid their debt

for prior criminal activity have their health care needs met as members of our society. When these individuals reach an age or exhibit physical condition or cognitive impairments that require long-term care services, where and how should their health care needs be met to insure everyone's safety and security?

As you are aware nursing homes provide a residential setting with 24-hour care and services for millions of individuals who require significant assistance dues to physical or mental limitations. It is critical for this Committee and others to understand that these facilities fulfill a necessary role caring for the frail, elderly and disabled who can no longer safely be cared for in their homes or communities.

The most important aspect of determining appropriate services in any nursing facility patient, including security issues is the individual patient assessment. Currently a federally mandated assessment must occur upon admission to a facility in order to create an individual care plan for each resident that insures their clinical needs are met, as well as addresses any safety or security concerns.

A resident who is known to have a criminal history, is known to be a registered sex offender may or may not require additional supervision or separation from the general facility population. An individualized care plan for a convicted criminal or sex offender in a persistent vegetative state would clearly be different from an ambulatory resident who has no criminal past but has exhibited behavioral issues.

In 2006, the GAO issued a report on registered sex offenders in long-term care facilities. While the study focused on the issue of sexual offenders residing in nursing facilities, we were dismayed that the report stopped short of issuing any recommendation about the profession should address this issue.

Presently in most states long-term care facilities are not notified by law enforcement officials of an incoming resident status as a sex offender or of their criminal background which prevents a facility of accurately evaluating the potential risk posed by the former sex offender as an individual basis. While the patient's history may contribute to and alter the individual care plan, it is important to understand that even with the information about a patient's criminal past, long-term care givers may be unable to deny admission when placement is court ordered.

Also of note are the strict federal and state discharge requirements which may prevent the timely discharge of patients discovered to have a criminal past or, more significantly, be exhibiting behaviors that actually pose safety and security issues.

Health care providers, government oversight agencies, and enforcement must come together whether on a state or national level to begin to address reasonable and appropriate solutions to this growing problem. AHCA is deeply concerned about the issue of sexual predators in nursing homes and will continue to work to insure all residents, family and staff are safe in their facilities.

However, facilities can only do so much in the current system. A national database of sex offenders as well as a consistent and standard definition of the term need to be created. Policy makers and law enforcement also have a responsibility to provide clear policies for long-term care facilities to deal with this issue that ad-

dresses resident protection, as well as compliance with federal privacy laws.

AHCA is committed to quality long-term care for all residents, and we are continually working to improve and enhance quality in all facilities. A collaborative effort between long-term care providers, Congress, and law enforcement is necessary to achieve the highest levels of safety for all residents.

I would like to end my testimony today on a personal note. I have four family members living in our facilities right now, including my mother and wife's grandfather. I live in the community where I was born, raised, and will be buried. Every day I help to take care of the people who helped raise, educate, and prepare me for life. I take the responsibility of caring them very seriously and I strive to provide the highest quality of care possible.

Long-term caregivers have many employment choices, but they choose to come to work in our facility each day providing care to the frailest of our society. they are heroes of long-term care, and I entrust the care of my loved ones to them each day.

Thank you for the opportunity to offer these comments on behalf of millions of professional, compassionate, long-term caregivers and the millions of frail elderly and disabled Americans they serve each day.

I look forward to responding to your questions.

[The prepared statement of Mr. Coble can be found in the appendix at page 45.]

Chairman ALTMIRE. Thank you, Mr. Coble.

Mr. McDonough, Mr. Sean McDonough is an attorney from Pennsylvania, and his law firm recently represented the victim of an assault in a nursing home, and in that case the court found that the nursing home was negligent in allowing a resident with a criminal background to be enrolled in the facility without notifying the residents or taking steps to protect their safety.

Mr. McDonough is Board certified in child advocacy by the National Board of Child Advocacy and a member of the American Board of Child Advocates.

Thank you for being here, Mr. McDonough. We look forward to your testimony.

STATEMENT OF SEAN McDONOUGH, ESQ., DOUGHERTY, LEVENTHAL, AND PRICE, LLP

Mr. MCDONOUGH. Good morning, Congressman Altmire, Ranking Member Fallin, and members and staff of the Committee. I have been asked to provide testimony this morning on the issue of the impact of predators on long-term care facilities on small business operators. As the Congressman noted, my firm, myself and my partner, Pat Dougherty, recently represented a woman by the name of Lilian Guernsey, who is now deceased, and her son Thomas Itterly arising out of two documented sexual assaults perpetrated upon Ms. Guernsey by 31 year old Daniel Statham.

An overview of the circumstances surrounding Mr. Statham's admission to the Country Living Personal Care Home demonstrate in graphic fashion the need for some legislation to assist small business operators in avoiding the myriad of problems associated with

accepting sexual offenders at their facilities without appropriate screening or consideration as to whether these individuals should be accepted into a setting where some of our most vulnerable citizens are placed for care.

Steps need to be taken to insure that our elderly and infirm citizens do not suffer the type of violent attack experienced by Lilian Guernsey at the hands of Mr. Statham.

Mr. Statham was 31 years old at the time he raped Lilian Guernsey. At the time that he arrived at the Country Living Personal Care Home, he had had eight prior adult arrests, three convictions,a dn two adult commitments to correctional facilities. In 1992 alone, he had been charged with no less than 11 offenses, some of which were violent offenses and many of which he was not prosecuted for because he was determined to be incompetent to stand trial.

However, in 1994, Statham was arrested in Lackawana County, Pennsylvania as a result of an assault on his girlfriend, and he was sentenced to serve one to three years in prison. Shortly thereafter, he pled guilty to a charge of aggravated indecent assault in northeastern Pennsylvania in Wayne County and was sentenced to serve three to six years in a state correctional facility.

In that case Statham had taken a 13 year old girl into a wooded area and raped her. Statham refused to participate in a sexual offender treatment program during his period of incarceration, and as a result he maxed out his sentence, and this is where the case really becomes troubling.

At the completion of Mr. Statham's sentence, he did not provide the Commonwealth of Pennsylvania with an address where he could go. As a result of that, the commonwealth directed the State Police to take him to the Northumberland County Prison. At that time, the judicial system in Northumberland County brought Statham before the court and he was sentenced to time serve in six months' probation.

When the court made an inquiry as to whether that probation was in the mitigated range for the offense, the probation officer indicated, "I have no idea. We have no information on the defendant at all."

Therefore, Statham was permitted to leave the prison and taken first to the Omni One Personal Care Home and then Country Living without even a rudimentary presentence investigation having been performed. The order of court, which we have incorporated into the materials which we submitted for the consideration of the panel stated the following: "the court directs the defendant to take a bus to a halfway house in Scranton and to maintain his residence in Northumberland County."

It was established during Ms. Guernsey's trial against Country Living that Northumberland County prison officials had notified the personal care homes, both personal care homes where Mr. Statham had resided prior to the rape that he had been sentenced for a violent sexual offense and that he was being released directly from a correctional facility.

Lilian Guernsey was raped on February 27, 2002. My partner and I tried that case exactly four years to the date beginning on February 27 of 2006. The events of February 27, 2002 could have

been prevented if some initiatives, which Mr. Bledsoe has been proposing around the country, had been implemented.

The sexual offender assessment report, which I have referenced in the materials provided to the panel, indicates in graphic detail the indignities visited upon Lilian Guernsey by Daniel Statham on that tragic evening. Lilian's story needed to be told as to what occurred to her on that evening, and her victimization unfolded during the trial which occurred.

After she was assaulted, Lilian returned to Memphis, Tennessee with her son Tom, and he cared for his mom in his own home as best he could, but she lived out her days in a nursing home outside of Memphis. Lilian Guernsey died within two months of the conclusion of the trial brought on her behalf against Country Living Personal Care Home. She was 90 years old at the time of her death.

As a result of the attack on Lilian Guernsey, Daniel Statham was charged with rape, sexual assault, and indecent assault. He currently is serving an extended prison sentence at the state correctional institution at Camp Hill.

As a final observation, I would suggest to the members of this panel would be very honorable work that you are doing here today, that some initiatives need to be in place by the time Daniel Statham is released from prison.

Thank you.

[The written statement of Mr. McDonough can be found in the appendix at page 50.]

Chairman ALTMIRE. Thank you, Mr. McDonough, and thank you to all of the witnesses.

We will now enter into the question and answer portion, and what we will do is a couple of rounds. I will ask a few questions and turn it over to Ms. Fallin and we will do it again.

I wanted to start with Mr. Bledsoe, and we appreciate you being here with the expertise that you bring to the table on this issue. States have widely differing procedures regarding the issues that we're discussing today, and I wondered if you had some recommendations on states in the country that we could use as a model that have taken a leadership role and taken steps to address this issue and were Congress to get involved on the legislative side, what states could we use to exemplify with regard to this issue?

Mr. BLEDSOE. Thank you, Mr. Chairman. An excellent question.

There are several recommendations that I have, some of which have been implemented by other states, and some have not. The biggest recommendation I have is to follow Oklahoma's example. Representative Steele, Senator Tom Adleson from Oklahoma, ten percent of the legislators in Oklahoma co-sponsored this bill, the long-term care sex offender's bill, House Bill 2704 in Oklahoma. That bill separating offenders from non-offenders is the most concrete legislation that we can do at the federal level and at each state level. It absolutely removes predators from their prey. So that would be my first recommendation.

The second recommendation is we need to do criminal background checks on all residents coming into facilities. Illinois conducted criminal background checks on their residents, and while we had documented about 100 registered sex offenders living as

residents in long-term care facilities in Illinois, when they did criminal background checks, they found over 1,000 convicted felons were living in their facilities.

So criminal background checks will answer a lot of questions and respond to some issues that Mr. Coble brought up about how we screen these people and how we decide what kind of levels of care do we need to be providing for them.

Notification is an absolute necessity between the criminal background checks and until the time we have these secure long-term care facilities following Oklahoma's example in place.

Staff, residents, families, and visitors at these facilities absolutely need to know if there's a criminal offender in the facility. Oklahoma is one of those states that has some of that notification. We would like to see more.

We also need to make sure that crimes are being reported to law enforcement. Many of these crimes are never reported to law enforcement. There needs to be legislation to make sure that crimes are mandatorily reported to law enforcement when they're found or suspected. There are statutes across the country for this, but they are relatively loose, and they need to be tightened up.

Another recommendation is we need to absolutely track these criminal offenses that take place in long-term care. We need to track the offense, where it occurred. As well, we need to track the offender. When an offender commits a crime in a long-term care facility, if we haven't already done a criminal background check, we need to do a criminal background check on that offender and see what kind of history they have.

That way in the future as we move forward with this system, we can monitor, we can evaluate, and we can modify it accordingly.

And then we should also look at video monitoring and make that an option for residents who want to have video monitoring in their rooms, and this way we can see who it is that's been assaulting them and identify whether that's a staff member, whether it's a visitor, or if it is a fellow resident and who it is so that we can take appropriate action.

Chairman ALTMIRE. Thank you.

Mr. McDonough, in your lawsuit the court found that there were no reasonable attempts to create safeguards to protect residents. Can you identify some of the basic steps that nursing homes can take moving forward to address this type of problem?

Mr. MCDONOUGH. I think, and I am sensitive, Congressman Altmire, to Mr. Coble concerns relative to the management of risk, and I think that the nursing home industry and the personal care home industry should aggressively look toward government. I know regulation is typically considered to be a bad thing, but in this particular instance it is a good thing.

In our case, as I tried to highlight, unfortunately the criminal justice system and the court was essentially complicit in the victimization of Ms. Guernsey. It seems to me that the most appropriate step has to be very detailed reporting requirements with respect to past criminal history so that nursing home operators without unnecessary government interference can certainly have the tools available to them to make an informed decision as to whether or

not a particular individual is an appropriate candidate for their facility.

So it would seem to me that particularly when someone is referred to a long-term care facility directly from the criminal justice system, as was the case with Daniel Statham, that the referring agency should have an affirmative obligation to specifically detail that individuals' past criminal history.

I think as a threshold that is a very minimum requirement that could be instituted. Now, in our particular case it was established that the owner of the facility did, in fact, or had been made aware of Mr. Statham's background. So it was not quite as much an issue in our case, and it was one of the things that the court found to be particularly egregious about the home's conduct.

But there has to be knowledge on the part of the operators of these facilities as to the nature of the person's prior offenses.

Chairman ALTMIRE. So do you believe, Mr. McDonough, that state registries and background checks are adequate safeguards or you are recommending them as a minimum?

Mr. MCDONOUGH. Well, there is certainly a minimum safeguard, and then there has to be some additional consequences for the failure to properly notify the personal care homes and the nursing homes about the person's background.

Here we had a breakdown in two separate probation departments, one in Wyoming County where the personal care facility at issue was located, as well as Northumberland County. So certainly the registration procedures for Megan's law offenders in the Commonwealth of Pennsylvania, which is currently in place, needs to be enforced, and I think that federal congressional oversight of this issue is certainly warranted in light of the tragic consequences that have been documented before the panel this morning.

Chairman ALTMIRE. Thank you.

And I will give one more follow-up question to Mr. Coble and then we will turn it over to Congresswoman Fallin.

You have heard what Mr. Bledsoe and Mr. McDonough and the other witnesses have said. What is the impact on the nursing home industry of this type of recommendation, a notification where everyone coming into the nursing home would be aware of the background of everybody else in the nursing home as it relates to this issue? What would that do to your industry?

Mr. COBLE. Well, our industry certainly agrees, Mr. Chairman, with the need to be notified, and we don't want to take anyone to any of our facilities who is danger to any of our residents, our visitors, our staff, anyone.

We need notification. We need databases that are accurate. We do not need the courts ordering people into our facilities that are a danger to anyone. It is all based around assessment.

I mean, if that person is in an end of life vegetative state it is one thing. If they are, as in some cases we have heard today, able to harm another person, they do not need to be there.

And so our industry is for quality and safety. As I said, my mother lives there. I am not going to put anyone in one of my facilities that would harm my mother.

The other thing that will be a challenge to our legislation in Oklahoma is federal privacy laws, as the Health Department starts

to build a framework around the legislation that was passed, and also some very strict federal regulations around discharge and transfers of residents who reside in our facilities.

Many times we want to move residents from our facilities and we cannot do it because federal law prohibits us from being able to do that, and so it would be very helpful. You can do many things up here that would allow the legislation that passed in Oklahoma to advance.

Ms. FALLIN. Thank you, Mr. Chairman.

To follow up on your comment, Tom, about federal law prohibits you from transferring, can you explain that a little bit further? So if you know that you have an offender in your home, are you saying that you are prohibited from transferring them?

Mr. COBLE. If we have someone in our home, whether it is a sexual predator or someone who has some really inappropriate behavior that could cause them to be a safety or a danger to another person, it is very difficult to transfer them. They have to be a danger to themselves or to others to the point that we cannot meet their needs or basically the fact that they are just not paying for their care.

And so those are the only two circumstances for which, and then at that point in time it is very difficult to get them out because the Department of Human Services or the ombudsman intercede on their behalf, and we are not allowed to get rid of them.

You know, the legislation that Representative Steele came forward with and championed, I mean, all parties sitting at this table were lock in arms in support of, and so we need a place that when we do identify them, that if as a small business owner it is causing concern and distress to family members, residents, staff, that we can then move that person to.

Ms. FALLIN. Are there any challenges you see with Medicare or Medicaid as far as receiving federal government help to house these offenders, to be able to put them in a separate, stand alone facility like the legislation Oklahoma has passed? Do you see any type of hindrances that we need to address on the federal level of taking the federal money and using that for a stand alone facility to house these offenders?

Mr. COBLE. I am not aware of any, but AHCA would be glad to provide you with that information.

Ms. FALLIN. Representative Steele, do you know of anything we need to be addressing on the federal side?

Mr. STEELE. Well, I would reiterate the fact that both Medicaid and Medicare are entitlement programs, and as I understand both of those programs, if a person qualifies, meets the eligibility criteria, then he or she is eligible for the funding for those long-term care services, and with the legislation that we are talking about today, this stand alone facility is a nursing home. It is not a prison, meaning that the residents in that facility would be treated just like other nursing homes.

It would have stricter supervision, a higher level of surveillance and security, but the residents would still be free within that facility, and to date I am not aware of anything that would prohibit Medicaid or Medicare funding for individuals who may be placed in this particular facility.

Ms. FALLIN. Are there any changes that you see that the nursing home industry would need to be able to have this separate, stand alone facility in law?

Mr. STEELE. Well, in Oklahoma, we are primarily a rural state. We are proud of that fact, and we have a lot of nursing homes in our state that are at or below capacity right now. So I think the idea for what we want to do in Oklahoma is to utilize an existing building for the operation of this.

The industry would have to meet the additional security measures that the Department of Health will create as they continue to put together the request for proposals in order to qualify as a potential resident or potential provider for this facility.

Ms. FALLIN. Sean, you talked about some of the legal issues. How do we address the privacy issue of the patients versus actually being able to get good, detailed information that Mr. Coble has said that he needs? How do we be able to balance the two?

Mr. COBLE. Well, it certainly is a question of balance, but I think as I had indicated in my earlier remarks, first and foremost is to have an adequate criminal background check on the individual, and there are existing laws in place on the state level that require registration of particularly in the case of sexual offenders, and while I think there are other violent type people in these homes, the criminal background checks on these individuals for convicted offenses in my view do not implicate the privacy issues that exist with respect to health care records.

Say if someone is diagnosed with some type of a mental illness, that is an issue separate and apart from the criminal background that many of these people bring to the facilities. So I do not see a privacy issue with respect to the criminal predators.

With respect to violent tendencies as a function of mental disabilities, that is a different issue, Congresswoman, that candidly I do not have the answer to in light of the HIPAA regulations, which we all know are very stringent.

Ms. FALLIN. I have one last question here for now. All of the recommendations that you heard from Mr. Bledsoe and also from—do you pronounce it McDonough?

Mr. MCDONOUGH. McDonough.

Ms. FALLIN. I am sorry. I mispronounced it earlier.

Did you hear anything that you thought would not be reasonable as far as being able to implement some of those recommendations or would be cost prohibited?

Mr. COBLE. Well, I think most of the changes in law really that give us the freedom to operate do not have a cost to them, but we feel that the criminal background checks should be done by law enforcement or state agencies and provided at a point where we can access them and look into them because they have access to the information and the ability to simulate that so that we can check against that.

So outside of those things, no.

Ms. FALLIN. Okay. Thank you.

Thank you, Mr. Chairman.

Chairman ALTMIRE. I wanted to ask Representative Steele a couple of questions about his bill.

You provide for the creation of separate nursing facilities for sex offenders, and I am interested in the cost of this. Is this something that you feel that there is adequate support in the nursing home industry that they would operate this independently and feel like they would be able to make money doing this and do it on their own, or is this something that you would need state or federal money or some other source to help fund?

Mr. STEELE. That is a great question, and I appreciate the question.

The idea at this point is to put together a request for proposal and allow the private industry to use an existing building so that there would be no money in new construction other than perhaps what it would take to bring the facility up to meet the heightened security and surveillance measures that the Department of Health would put forward.

I want to reiterate what Mr. Coble has said in the beginning. We worked with the industry and with the advocates for a number of years to get to this point, and again, I think the idea is to not use any taxpayer dollars necessarily or any more additional money for sex offenders in need of long-term care. Rather, we want to try to identify a situation that can truly be a win-win situation, a win situation in reducing the risk associated with a very vulnerable population of people who are currently living in our nursing homes, and a win situation for those individuals who have served their time of incarceration, are registered sex offenders, may be prone to reoffend and in need of long-term care.

Chairman ALTMIRE. Thank you.

And on that same note, with the process Governor Henry recently signed the bill and you have passed it and enacted it now. Can you talk a little bit about any opposition that may have come up? Were there advocacy groups or for some group on the other side? What did you have to overcome as far as points against the legislation as it was moving through the process?

Mr. STEELE. Well, with an issue like this as much as anything, it comes down to communication, and I think because we have been working on this particular issue for a number of years with people from the industry, people within the advocacy groups, and really tried to take our time and understand and communicate along the way, we have not experienced a whole lot of opposition because people seem to understand what we are trying to accomplish with this particular piece of legislation, and it has been truly a bipartisan initiative.

I mean, without Governor Henry's help, without Senator Adleson, who is a different party than myself, working and working hard for this particular legislation in the Senate, it would never have become a reality. But truly this is one of those issues that transcends party politics. It transcends the political minutia that sometimes we can get caught up with. It is an issue that is truly about helping people, and we feel like that we have at least come up with an idea that is a beginning point for accomplishing that goal.

Chairman ALTMIRE. Thank you.

I have no further questions. Congresswomen?

Ms. FALLIN. Just a few more, Mr. Chairman.

If I could ask Ms. Banning, of all the recommendations that you have heard today, being someone who has had to deal with this personally, have you found these suggestions to be helpful to protect a senior like your mother, or are there further steps that we need to be taking?

Ms. BANNING. This has probably been one of the most exciting days I have had to hear these suggestions. Wes and I have had dialogue over the last few years. He has told me proposals. I have done research on my own.

My biggest concern, Ivy Edwards was found unfit to stand trial, put in a mental institution, was released in 2005 back into the nursing home. So he is out there again. He is 88 years old. Just a measure to prevent that from happening.

A separate facility if these individuals are identified, a floor of a facility, a wing of a facility, to let the families—speaking as a family member, had I known that there was someone that could have caused harm such as Ivy Edwards to my mother, I would not have left her there for one day.

I think that the families deserve to know. They have a right to know who is there. So background checks, a simple background check was done in a matter of minutes the detective told me and revealed the 59 arrests for Ivy Edwards, the last arrest being my mother's. So letting the families know I think is imperative for peace of mind if nothing else.

And having the staff know. We sued the nursing home. We prevailed and got a judgment for negligence. They had no idea; the jury had no idea of Ivy Edwards' background. It was the behaviors that he exhibited while he was there. So I think if the nursing home had known up front what type of individual this was, I think that there would have been different measures taken to protect those that are there.

Ms. FALLIN. Are you saying that Ivy Edwards is back in a long-term care facility?

Ms. BANNING. The Attorney General for the State of Florida told a news reporter, Kelly Garlock, that when she was doing the investigation to find out if Ivy Edwards was still alive or if he was still in Chattahoochi, she was told that he was released in 2005, that he would never be competent to stand trial, and he was released back into the nursing home industry in the State of Florida.

Ms. FALLIN. Have you had any contact with that long-term care facility?

Ms. BANNING. I have checked every one I can find. I cannot find Ivy Edwards anywhere.

Ms. FALLIN. Well, I hope you find him and you give them a heads up.

Ms. BANNING. I hope I do, too. Yes, ma'am.

Ms. FALLIN. I think that will be very important.

If I could ask Representative Steele a couple more things, my understanding from the GAO report and from just the limited research that I have done, and you are the expert on this, but the GAO report did not identify any similar federal law for notifying facilities of sexual offenders like some of the states have. I know states have varying degrees of laws of notification on sexual offenders, but am I correct about that or is there a federal law that man-

dates that facilities have to be notified of sexual offenders or people who might be of harm to the residents?

Mr. STEELE. Congresswoman Fallin, it is my understanding there is no such federal law currently on the books.

Ms. FALLIN. Do you believe that a federal law would be beneficial?

Mr. STEELE. I do. I do think a federal law would be beneficial in requiring nursing homes to perform background checks on residents and also on all staff who may work within that facility. But, again, I think we need to take into consideration who pays for those background checks.

The thing that we want to do is not hinder business, but rather help business, and I hope that what we have done in Oklahoma is we have provided an alternative place for offenders who need long-term care to go so that those businesses in Oklahoma who primarily care for the general population do not have a negative perception problem that their particular facility is unsafe.

And I think that what we want to try to get to is the point where family and loved ones and the residents themselves have a peace of mind when they enter into a long-term care facility in our nation.

Ms. FALLIN. Well, following up on that cost, who did the State of Oklahoma decide would pay that cost for notifying the long-term care facilities?

Mr. STEELE. In 2005, I believe it is currently the responsibility of the nursing homes themselves, and that is an issue that probably needs to be revisited, but as of right now, it is incumbent upon the industry itself to provide those background checks.

I will tell you at that time and I think still today, the industry in Oklahoma is very willing to do whatever they can do to make sure that they address a problem that may jeopardize the safety of their residents, and so they kind of stepped forward in 2005 and said, "Hey, we believe this is the right thing to do. We believe in it so much that we will go the extra mile and we will actually pay for those background checks ourselves in order to insure the safety of our citizens."

Ms. FALLIN. Mr. Coble, do you have any response to that?

Mr. COBLE. Well, I just want to follow up on what Representative Steele has said. We in Oklahoma, and I think I can say this on behalf of the American Health Care Association, we want no one in our facility who is a threat or a harm to any resident, visitor or staff member, and also, the most important thing is we want peace of mind.

I think Ms. Banning and what she was saying, families, we need to put this to bed so that we can take care of the frail elderly. I know we had a couple ladies who would call our house in Oklahoma three years ago when this issue was on the forefront being discussed, and they were worried. They lived in our assisted living, and they would call my home, and my wife would have to reassure them that we are doing the appropriate things and that we are not going to do that.

But it is just a pressure on family members, and I am a provider and a family member both, and so I want to insure that everyone that we take care of is safe and we provide high quality care.

Ms. FALLIN. Mr. McDonough, do you think that having a stand alone, separate facility and using the Medicare/Medicaid money would be able to satisfy society's needs to provide for infirm offenders as human beings? They do need to go somewhere. So is this a good alternative for them?

Mr. MCDONOUGH. I believe that it is. I believe that is, Congresswoman Fallin. When Mr. Bledsoe and I first began to talk about the issue, that was one of the first questions that came to mind. Well, in terms of basic human needs, regardless of their past offenses against society, have to be taken care of, particularly not so much in the case of Mr. Statham as a 31 year old who could have resided independently, but for some of the elderly physicians, and I think mindful of Mr. Coble's concerns, there will be a market, as it were, for the housing of these individuals because they have to go somewhere.

And as I had said earlier, from the industry perspective of managing risk, facilities that are willing to take these people in at least will do so with their eyes open as to what they are facing and what additional safeguards need to be implemented to insure that these residents do not harm one another.

But I think clearly market forces would certainly dictate that there is a place for these facilities in society and that they can, indeed, be profitable. So I think it is an appropriate alternative and a workable one at that.

Ms. FALLIN. Mr. Chairman, that leads me to one last thought here, and I promise this will be it.

If I could ask Representative Steele, you know, one of the biggest concerns in discussing these types of facilities is how do you pay for it, and so have you found in your studies that by the use of Medicare/Medicaid funds and the ability of the private sector market to adapt to be able to establish one of these facilities that it can be paid for in a reasonable manner for the State of Oklahoma or even the federal government?

Mr. STEELE. Well, as I understand it, and I might want to defer to Mr. Coble to make sure I have my statistics correct, but about 70 percent of our nursing home population is Medicaid eligible, Medicaid/Medicare eligible, and again, those are entitlement programs, and so if a person is eligible, they receive funding for those long-term care services regardless of their criminal history.

And so ultimately it becomes a question of do we want to house these individuals who are sex offenders and who qualify for Medicaid or Medicare in with the general population or do we want to house them in a separate facility, and they would receive the funding no matter where we put them. It is just a matter of where do we need to put them in order to provide the protection that I think we are all in agreement here today that needs to be provided for our general population.

And so I think that for the private sector, who is willing to designate a facility to house offenders, they would receive the funding just like they would if, say, that offender were housed somewhere else in a home that was not a separate facility.

Chairman ALTMIRE. Thank you all for being here today. This is a very difficult subject to discuss, and we welcome any further feedback that you have to continue the discussion.

Mr. Steele, Mr. Bledsoe, Mr. McDonough, thank you for your advocacy and your tireless work on behalf of the victims. Mr. Coble, we realize that we put you in a very difficult position today as a representative of the industry to discuss what the industry has done while having to address the fact that some have failed within the industry, and we realize that it was a difficult position to put you in. Thank you for your testimony.

Ms. Banning, we certainly realize that it is very difficult to discuss on the personal issue what has happened to you and what happened to your mother, and we regret that we had to ask you to come forward, but as Congresswoman Fallin said, we are going to make something good come out of what happened, and we just cannot thank you enough for being able to share the story and under very difficult circumstances come before us. Thank you.

Thank you to everybody.

I ask unanimous consent that members of this Committee will have five days to submit statements and supporting materials for the record, and without objection that is so ordered.

And we will conclude the hearing. Thank you.

[Whereupon, at 11:23 a.m., the Subcommittee hearing was concluded.]

STATEMENT
of the
Honorable Jason Altmire, Chair
Subcommittee on Investigation and Oversight of the
House Committee on Small Business
Hearing on
"Sexual Predators in Nursing Homes"
Wednesday, July 16, 2008

This hearing on "Sexual Predators in Nursing Homes" is now called to order.

The decision to put a loved one in a nursing home is never an easy one to make. For most, it is an emotionally fraught and painstaking process. But once a selection has been made, most families take comfort in knowing that their loved one will be well cared for and looked after. For America's elderly and impaired, nursing homes have historically been places of security. And yet for many residents, that is no longer the case.

As a result of insufficient data and conflicting regulations, sex offenders have managed to infiltrate many of our country's nursing homes. And today, millions of our most vulnerable citizens are at risk.

In this morning's hearing, we will discuss the threat that sexual predators pose not only to our elderly, but also to the small health care providers that protect them. This troubling issue is of particular concern to our committee, given that the overwhelming majority of nursing homes are also small businesses.

According to a 2006 GAO report, close to 3 percent of nursing homes are now harboring sex offenders and for these people, advancing age is of little hindrance. In fact, the belief that older sexual predators are harmless is a dangerous misconception. Studies have shown that sex offenders continue to be violent well past middle age.

It is also worth noting that not all nursing home residents are elderly. The truth is that these facilities are often home to younger people with serious mental and/or physical handicaps. These younger residents can be both victims and perpetrators of nursing home violence.

The question begs: how did these predators break into our long-term care facilities? This is at least partially the result of an unreliable detection system. While the National Sex Offender Registry, or NSOR, attempts to name all convicted sex offenders, there are notable holes in the database. For one, the registry fails to include predators that were

convicted or released from prison prior to its 1996 inception. In addition to this problem, recent offenders often fail to self identify, and therefore cannot be added to NSOR at all.

As a result of these two system flaws, GOA believes that NSOR undercounts sexual predators by nearly 60 percent. Given the database's limited reach, it is reasonable to assume that nursing homes may house more sexual offenders than originally thought.

A tangle of conflicting rules and regulations have made it all but impossible for facilities to address their problems with sex offenders. Small health care providers are now governed by some 70 pages of fine print in the Code of Federal Regulations. As a result, the system is a challenge to navigate. This is particularly true when it comes to reconciling safety policies with privacy concerns.

Once a sexual predator has been identified, it is often difficult for a facility to act on that information. Under the Health Insurance Portability and Accountability Act (HIPAA), for example, sharing information about prior convictions can be considered a privacy violation. And in fact, nursing home staff and residents' families are rarely informed of other residents' offender status.

In an attempt to fix this broken system, one state is already moving forward. Following a series of incidents in Oklahoma nursing homes, the state legislature passed a bill to create separate facilities for sex offenders. In doing so, they hope to attack this issue head on, and set a precedent nationwide.

Today, we will discuss that particular piece of legislation, and look for other potential solutions. Nursing homes have traditionally been a safe haven for America's elderly and disabled, and it is important that we do everything within our power to keep them that way.

With that, I'd like to thank all the witnesses in advance for their testimony. The committee is pleased they could join us today, and looks forward to their input on this issue.

U.S. House of Representatives
SMALL BUSINESS COMMITTEE
Representative Steve Chabot, Republican Leader

Wednesday,
July 23, 2008

Opening Statement of Ranking Member Mary Fallin

The Impact of Predators in Long-Term Care on Small Business Operators

"Good morning. Thank you, Mr. Chairman, for holding this hearing on 'The Impact of Predators in Long-Term Care on Small Business Operators'. The purpose of this hearing is to examine the impact of the placement of criminals and sexual predators on the operations of small businesses that own long-term care facilities. This is an important issue that affects many of our parents, grandparents, aunts and uncles and friends across the country. Federal law and regulations are designed to insure that residents in nursing homes have certain basic rights including to be free of physical harm and abuse. These rights frequently intersect with the placement of individuals in nursing homes who have a record of physical assaults, including sexual predators.

"Seniors residing in assisted living facilities are some of the most vulnerable of our citizens. Anytime their safety or health is threatened, it is both concerning and alarming.

"As someone who has had a mother in a nursing home, I have tremendous respect for the care and the services they provide to our seniors. In some instances, however, these facilities and their staff can be unaware of predators living in their facility or without the means to ensure the safety of their residents.

"The rare cases of sexual assault and abuse that have been documented in these facilities are particularly abhorrent. I have organized a hearing this week to investigate both the scope of the problem and the possible roles the federal government might play to eliminate it. I look forward to working with our nursing homes to guarantee the kind of safe environment that our seniors and their families deserve.

"I'd like to extend a special thanks to each of our witnesses who have taken the time to provide this subcommittee with their testimony. I would especially like to welcome Oklahoma State Representative Kris Steele, who held extensive hearings on this topic and introduced state legislation signed into law this year that addresses this problem. Joining him today is Tom Coble, a respected owner and operator of nine long-term health care facilities in Oklahoma; Wes Bledsoe, a nationwide advocate for nursing home residents who resides in Oklahoma and Sandra Banning, whose mother was a victim of sexual assault in a Jacksonville, Florida nursing home. Welcome to the Small Business Subcommittee on Investigations and Oversight; I am sure we will find your expertise on small business and this important issue extremely helpful.

"According to the most recent compilation of statistics from the Centers for Medicare and Medicaid Services, there are 15,762 nursing facilities in the United States with 1.7 million beds. Slightly more than 46 percent of the nursing facilities in the United States are independent and not associated with another nursing home. Over two-thirds are operated on a for-profit basis. Of those, approximately 81 percent had revenue under ten million dollars. In short, the nursing home is highly localized, and no enterprise controls more than 5 percent of the beds in the industry. Nursing homes play a critical role in providing care to those Americans whose physical or mental condition makes it impossible for them to take care of themselves or don't have loved ones to provide such care.

"Federal regulations establish rights for nursing home residents, which include the right to be free from physical abuse, including sexual abuse, and to reside in an environment that maintains their dignity and quality of life. As a condition of Medicare or Medicaid participation, nursing homes and

"long-term care facilities must report incidents of abuse according to state requirements. However, nursing homes and long-term care homes face divergent and conflicting federal laws that make it difficult for them to satisfy multiple mandates.

"Depending on state regulations, many long term care facilities and their residents may not be aware of residents who are offenders. Though all sex offenders are required to register with the National Sex Offender Registry, 25% of them do not. The extent to which states' reporting laws apply to all registered sex offenders or include reporting to long-term care facilities varies greatly. When facility residents are known offenders, differing interpretations exist among states, industry, and federal officials whether the disclosure of this information could violate federal and state privacy laws. In certain instances, long-term care facilities are not always notified when individuals with prior convictions enter them and the assessment tools the facilities use to determine the health care needs of residents typically do not gather information about prior criminal convictions. In addition, there is no federal requirement to notify a long-term care facility of a sex offender who has been placed in their facility.

"We in Congress must look into federal law to ensure a healthy environment for long-term care residents, one free from violence and abuse by their fellow residents. It is important to make sure sexual predator data is accurate and available to nursing homes and families to ensure that residents who may pose dangers to other residents are either not admitted, disclosed or isolated from the main population. Further, we must ensure privacy regulations do not prevent these facilities from notifying other residents or taking appropriate isolation measures. It is of utmost importance that any action taken enhances the job of nursing homes and long-term care facilities, to guarantee their business, employees and their residents are unharmed by sexual predators.

"These facilities, primarily small businesses, want to provide the best possible environment for their residents. Yet, inadequate federal law and conflicting regulations may make their job impossible. Without changes, small nursing homes will remain unduly burdened with objectives that they may not be able to meet. Mr. Chairman, I look forward to working with you on this important issue. Again, I thank each of you for being here today and I yield back the balance of my time."

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Capitol:
2300 N. Lincoln Blvd., Rm. 438
OKC, OK 73105, (405)557-7345

District:
1211 Cambridge Drive
Shawnee, OK 74804
(405)878-0514,
krissteele@okhouse.gov

House of Representatives
STATE OF OKLAHOMA

Chairman:
Health Subcommittee

Member:
Public Health Committee
Human Services Committee
Veterans Subcommittee

KRIS STEELE
STATE REPRESENTATIVE
District 26

July 23, 2008

U.S. House of Representatives
Committee on Small Business
Subcommittee on Investigations and Oversight

RE: The Impact of Predators in Long-Term Care on Small Business Operators

Dear Committee Members,

Reducing the risk of abuse and providing protection for senior adults living in long-term care facilities was a top priority of the 2008 Oklahoma Legislative Session. A growing number of registered sex offenders fueled a discussion of where to place individuals who have served their time of incarceration, yet are no longer capable of independent living.

An in-depth study on this issue resulted in the creation of House Bill 2704 which directs the Department of Health to request bids for the operation of a stand-alone, long-term care facility that will house elderly registered sex offenders. The request for proposal (RFP) will set forth certain specifications to designate the heightened security measures necessary to protect the public and residents of the facility.

According to the Oklahoma Department of Corrections (DOC), an estimated 2,450 inmates convicted of sex crimes or violent offenses will be released from prison in the next 10 years. Twenty-six percent of these convicts will be age 51 or older and potentially in need of nursing home care. Numerous studies confirm that certain sex offenders are highly resistant to rehabilitation. Registered sex offenders living in nursing homes can create a dangerous environment for other residents in the home. Officials say 30 individuals listed on the Oklahoma Sex Offender Registry currently reside in nursing homes.

In 2005, the Oklahoma Legislature passed a law requiring nursing homes to post public notification when a registered sex offender is admitted. This measure also directed DOC to notify local law enforcement entities about the location of sex offenders living in nursing homes. However, because of low staff levels and a short supply of security guards, some nursing homes have experienced difficulty in properly monitoring sex offenders residing in their facilities. Federal regulations also prevent nursing homes from restraining residents except in rare circumstances. Offenders living in nursing homes also present a challenge for small business operators. Knowing an offender is living in a particular facility creates a sense of uneasiness, unrest and uncertainty for family, loved ones and other residents. The perception is no one is safe in a home with an offender. Yet, federal law requires states to pay for long-term care services for individuals who are Medicaid eligible – whether or not they are convicted felons.

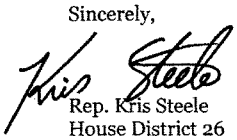
An interim study conducted in the fall of 2007 resulted in nursing home officials urging lawmakers to prevent those convicted of sex crimes from being placed with the general population. In addition, advocate groups, such as AARP, expressed support for the establishment of a separate facility for registered sex offenders in need of long-term care.

By encouraging the private sector to establish a home with additional security measures for registered offenders, it is the belief of the state that better protection would be afforded to our aging population while meeting the needs of those who have served their debt to society yet remain at risk for re-offending.

Protecting our senior adults is a primary responsibility of state government. Oklahoma's most citizens deserve to live the latter years of life free from the fear of harassment or assault. Implementing appropriate safeguards for the elderly is imperative in making this goal a reality.

Thank you for the opportunity to address this committee. If I can be of further assistance, please contact me at (405) 557-7345 or by e-mail at krissteele@okhouse.gov.

Sincerely,



Rep. Kris Steele
House District 26

SANDRA THURSTON BANNING STATEMENT
JULY 23, 2008 - 10:00 AM - Rm 1539 Longworth House
THE IMPACT OF PREDATORS IN LONG-TERM CARE ON SMALL BUSINESS OPERATORS

Sirs and Madams, My name is Sandra Thurston Banning and I address you today because of my deep concern for the welfare of the vulnerable adults in our long term care facilities in the United States. I would like to ask this Congress to pass a law that requires background checks on all residents in long term care facilities.

Background: My mother, Virginia Thurston, was the wife of a U.S. Navy Chief for 23 years. She raised four children while my father was often deployed, either in support of WWII or the Korean War or simply protecting the United States. My father was deployed for a total of 13 years during their 23 year marriage. The point to be made here is my mother became very independent and learned to handle the everyday crisis of rearing a family of three sons and a daughter on her own. Determined to live on her own and be independent, she remained in her home even though she was constantly in danger of harming herself or being harmed by another. She would go walking at night believing she was going to school or work and the police would bring her home and call one of her children. I told her repeatedly she could not walk at night because there were people out in the world who would rape or assault her. She would always say "Oh Sandra, who would want to rape an old woman?" After four years of continually trying to allow her to be in her home she loved so dearly, and keep that independence she fought so hard to maintain, we found it necessary to place her under the care of the staff in a long term care facility (nursing home). The only thing I have ever done harder than placing her in the nursing home was placing her in the ground when she died in November 2003.

Why do I tell you this background? I want to make this statistic real. Right now, my mother is just a number; a victim counted in some tabulation of assaults, or nursing home residents who have had the misfortune to be in the wrong place at the wrong time. She was a person, a loving warm caring woman who made her children her life and one I loved more than life itself. I just wanted to keep her safe and happy.

Statement of Sandra Banning
THE IMPACT OF PREDATORS IN LONG-TERM CARE ON SMALL BUSINESS OPERATORS - JULY 23, 2008 10:00 AM Longworth House Office Building Rm 1539

I surveyed every nursing home in the area before selecting All Saints Nursing Home in Jacksonville. It was close to my office so I could go see my mother at lunch and on the way home from work. This nursing home was relatively new to the Alzheimer's world and had just opened the "Butterfly Wing" for those individuals with dementia or memory ailments. Mother didn't understand why she was there. We (her children) told her it was because we were trying to get her medication regulated and she accepted that for the time being. The staff didn't know exactly what to do as they had little experience dealing with dementia patients. We subsequently moved mother to Southwood Nursing Center that had a much more open floor plan where mother was able to have the freedom to move about. Mother could walk until her heart was content and she would have a little bit of the freedom she needed to be happy.

Ivey Edwards was also a resident at Southwood Nursing Center. He lived in a wheel chair and had a very nasty disposition and often used foul language, but so did a lot of the residents at that nursing home. At ten o'clock PM on July 23, 2002, Ivey Edwards wheeled his chair past two different nursing stations and into my mother's room. He placed his wheel chair under the handle of her door where he wouldn't be disturbed and climbed into bed with my mother and raped her. Two nurse's aides were making rounds and found my mother's door closed which was supposed to be open. When they tried to open the door, it would only move a couple of inches because of the wheel chair, but far enough that they were able to see movement in my mother's bed. They entered mother's room from the room next door that shared a common bath. When they saw Ivey Edwards in mother's bed on top of her, they ran to get the nurse because they were afraid of him. When the nurse came in the room, Ivey Edwards stopped assaulting my mother and climbed out of her bed. The nurse said he still had an erection as he pulled up his pajama bottoms and walked back to his wheelchair. He was taken to his room from what I understand. Ivey Edwards was 83 years old. Not your typical rapist, I am sure.

The nurse called me at home that night around 10:30PM. He told me they were making rounds and found a man in bed with my mother but nothing was happening. They stated the man was just lying there. The duty nurse asked if I wanted them, Southwood Nursing Center, to send mother to the

Sexual Assault Response Center (SARC). I asked if they were sure nothing had happened and I was told again the man was just lying there and mother was asleep. I told them not to wake her up and scare her to death. The nurse assured me nothing had happened and they would let her sleep.

The next morning, Southwood's Social Worker called me at work and told me more had occurred than I had originally been informed and the nursing home would have to send mother to the SARC. I told them they would not do anything until I got there and I immediately left work to go to the nursing home where I was met by the staff, police and my mother. My mother was completely oblivious to what was going on and I had to tell her she had been raped. She was absolutely horrified and embarrassed. Because of her dementia, I had to tell her many times that morning because she was confused and each time, she relived the terror. No one should have to endure this kind of trauma. I will never know if she was aware of the rape when it occurred, but I pray to God she did not. The nursing home knew that night what had occurred because they removed her bed linens, her nightgown, under garments and bagged them for the police. Ivey Edwards was taken to jail at 2:30 AM the next morning, yet I was told nothing happened. I had to personally take my mother to the SARC and hold her hand while she cried and they performed the examination. No daughter should have to endure this kind of pain and trauma.

When Ivey Edwards was arraigned for sexual assault, I was informed by the detective handling the case that he ran a background report in a matter of a few minutes and found Mr. Edwards had a criminal record (59 arrests) dating back to the early 1940's and he had been ordered by a Judge in Alachua County, Florida to be placed in a nursing home because he was a danger to himself and others in society. The court system locked this monster away with vulnerable adults and placed my mother in harm's way.

I sued Southwood Nursing Home for negligence. It took five long years to finally go to court and in February 2007, as a result of a jury trial, Southwood Nursing Home and Sterling Healthcare, Inc. were found guilty of negligence and mother's estate was awarded $750,000. As of this writing, neither Southwood Nursing Center nor Sterling Healthcare, Inc., have paid one dime of the judgment. The

money isn't important to me and won't unrape my mother, but the verdict of negligence on the part of Southwood Nursing Center and Sterling Healthcare, Inc., gave me what I needed to go to Tallahassee, Florida and pursue legislation to require background checks on all residents. There is already a requirement to perform background checks on staff and doctors. The residents can be just as dangerous as the staff and doctors, as was proved by Ivey Edwards.

The Florida legislature has considered a bill to require background checks, but so far have been unable to agree on passage.

In summary, something has to be done to protect our loved ones from the violent offenders residing in nursing homes. I realize these individuals are entitled to care and protection from others and themselves. But at what cost? I placed my mother in a facility to keep her safe and out of harm's way. I apparently did nothing more than lock her away with a monster that had free reign to assault her while the staff stood by unaware of this man's criminal past. The residents, the residents' families and the staff have a right to know who is under residential care at these facilities. A simple background check is a small price to pay for peace of mind for all concerned. It doesn't cost a lot and does not require a major rewrite of rules and regulations governing nursing homes and long term care facilities to make a change. If the staff had known Ivey Edwards was a convicted child molester and rapist through a background check, they might have stopped him at 10 PM on July 23, 2002 as he wheeled his way into my mother's room and perhaps my mother would not have been raped.

There are hundreds of documented cases of violent offenders and predators currently residing in nursing homes throughout the United States. It could just as easily be you, your mother or father, your sister or brother, your wife or husband the next time. Can you live with that? Perhaps we can take Oklahoma's lead and establish a long term care facility in each state just for violent offenders. Illinois already requires a background check on all residents of long term care facilities paid for by the police department. Several states are beginning to take action to protect their senior adults from predators like Ivey Edwards. Why not make it a national requirement to check the background on everyone working or residing in a

nursing home or long term care facility? Such a simple requirement can have such a tremendous impact and perhaps save the life or prevent the suffering of someone you love.

I realize and appreciate there are a lot of important issues coming before you on a daily basis. We have a war going on, gas and food prices are high and the stocks are down. This is my own personal war which I add to your list. Again, I would like to ask this Congress to pass a law requiring background checks on all residents in long term care facilities. Help me make a difference. Thank you all for your time.

Very respectfully submitted,

Sandra Banning

SANDRA BANNING

United States of America
House of Representatives
Small Business Committee
Subcommittee on Investigations and Oversight

Congressional Hearing
Impact of Predators in Long-Term Care on Small Business Operators

Wednesday - July 23, 2008

Testimony by Wes Bledsoe, Citizen's Advocate

Thank you Mr. Chairman, Members of the Committee, and staff for the opportunity to testify about The Impact of Predators in Long-Term Care on Small Business Operators.

"No man left behind!" is a pledge and mantra often used by our brave armed services personnel. Many have given the ultimate sacrifice to fulfill that pledge.

In recent years, I have wondered. Is there a statute of limitations on that pledge? How far does it extend? Does age, ability, or relationship impact this pledge? For as you will hear today, decorated heroes, those who served our nation, their families, and other citizens who made this nation great are falling victim to rape, sexual assault, physical assault, and even murder in America's nursing homes and other long-term care facilities.

It is time to expose one of America's direst secrets, Predators in America's Nursing Homes.

Much like a dead canary in a mine raises the alarm of unseen danger requiring immediate action for survival, so too should Predators in Nursing Homes.

What is the impact on small business operators housing predators in their long-term care facilities? It's bad for business and it's even worse for residents, staff, and even visitors.

As a brief introduction, on Monday, May 8, 2000 my brother James called me with these words, "Grannie's at the hospital. The nursing home has killed her!"

The death of my grandmother, Eunice Allen, on her 86th birthday compelled me to become a citizens' advocate. At her graveside, I vowed to never allow another nursing home resident to die due to the negligent acts and abuse in a nursing home.

I was so naïve.

As an advocate over the following four years my investigations, research, analysis, and reporting on neglect, abuse, and incompetence in long-term care earned me the title of "The Nursing Home Watchdog," by various news agencies. Yet, for years Congress, the Government Accountability Office, the media, and citizens from around the nation have documented critical problems in America's long-term care system.

Yet needless suffering and preventable deaths of citizens in term care facilities continue.

Over the years I would take information, issues and documented incidents to officials and the media. The media would also call on me for assistance and responses to stories they were generating.

In mid-April 2004, Ziva Branstetter with the Tulsa World called me for such a response. She advised her staff was working on a story about mental health in Oklahoma. In the process of investigating the story, the paper's staff came across an issue, for which she wanted a response.

The issue? Violent offenders found incompetent to stand trial, placed to live in nursing homes by the order of district court judges.

"What kinds of violent offenses?" I asked.

Ziva replied, "Shooting a police officer four times, or shooting and killing your grandmother with a shot gun, or shooting your wife in the head and attempting suicide yourself, or sexually molesting a child and having sex with your dog!"

My response, "It is inconceivable that anyone would believe it is appropriate to place these predators to live in long-term care facilities with our disabled and elderly loved ones who often cannot physically defend themselves or report what has happened to them."

That phone call changed my life and the focus of my advocacy.

We have known for years about rapes, assaults, and murders in long-term care facilities. Often we hear about staff and on occasion visitors who commit these crimes. However, how often are these crimes committed by fellow residents? Do any of these fellow residents have a history of victimizing others? Could there be a link between violent and sexual offenders living in long-term care and these crimes?

My good friend, Arlene Urbalejo and I quickly began researching the issue of Predators in America's Nursing Homes and other long-term care facilities. These other long-term care facilities include assisted living facilities, residential care facilities, and Intermediate Care Facilities for the Mentally Retarded (ICFMR).

The results of our efforts are stunning. We continue to shock and dismay people, including those in powerful positions, when we communicate our findings to them. Many have said, "I can't wrap my brain around this" and "how can this happen in America?"

Could it be possible, that in America we would knowingly place violent offenders to live with citizens who are not able to defend themselves? Or could not effectively report what has happened to them?

Yes. Case in point, Sebastian Dipasquale charged with Lewd Molestation for touching the private parts of a three year old and Crimes Against Nature for having sex with his dog. Yet a year later, the judge noted "the defendant poses a significant risk to the safety of himself or others if released" yet in the same document ordered him to live in a nursing home.

What about the other residents in the facility?

Is this an isolated case? No.

What kinds of Predators are living as residents in nursing homes and other long-term care facilities?

- Inmates
- Parolees
- Violent Offenders Found Incompetent to Stand Trial
- Sex Offenders Who Are NOT Required to Register
- Registered Sex Offenders
- Violent Felons
- Residents to Assault Others BUT are NOT Charged Because the Assailant and / or Victim are of Diminished Capacity

Our research has focused primarily on Registered Sex Offenders, as this group is most traceable due to sex offender registry laws and online websites.

To date, we have located approximately 1,600 registered sex offenders living in long-term care facilities across America.

Yet, this number is far short of the actual number of registered sex offenders living in long-term care facilities. A few states do not post the entire address of offenders online, which makes it impossible to match against nursing home addresses downloaded from Medicare.gov. Many states do not list all sex offenders online. In one state we were informed that High and Moderate Risk Sex Offenders, who are child molesters and are living in nursing homes, (are downgraded to Low Risk, since they are not near their normal prey.

In keeping with this issue that numbers are greater than we have documented , many sex offenders are not required to register. Most sex offenders who were out of the criminal justice system before the registration laws were enacted are not required to register. Many sex offenders are not required to register for life. Therefore, there are many sex offenders living in long-term care facilities that are not accounted for in any study.

In addition, we have located offenders in long-term care facilities who were listed in at least one sex offender registry as "Absconded" or "Failed to Register." Others listed as "Homeless" or "Transients" also raise concern. Nursing home operators who solicit the homeless in shelters and on the street to live in their facilities, are well documented. Consider the case of Samuel Irving, who was formerly homeless before he was charged with raping and assaulting a female resident.

Who places these Predators in long-term care facilities?

- District Court Judges
- County Sheriffs
- Adult Protective Services Workers
- Department of Corrections Representatives and / or Contracted Agencies
- Self and Family Admissions

It is often stated, these offenders are being sent to the secure lock-down unit in the nursing home.

What is the secure lock-down unit?

It is the Alzheimer's unit. This unit typically has one double door at the end of a hallway that is locked. In many facilities, these units are not staffed twenty-four hours a day, seven days a week. As well, there are no locked doors for resident's rooms.

Placing criminal offenders in the secure lock-down units is truly putting the predators in with the prey. These are typically the most vulnerable residents in long-term care facilities. Most

cannot physically defend themselves. Others cannot believably report what has happened to them when they have been victimized.

What criminal acts have been committed by predators while living in nursing homes?

- Rapes
- Sexual Assaults
- Physical Assaults
- Murder

How many cases have been documented? Over 60 cases. But the number is far more as many rapes and assaults are never reported to law enforcement. Seldom are charges filed and assailants prosecuted, due to "diminished" capacity. Without charges being filed, we cannot identify the assailant and check for a criminal history.

What are the common misconceptions about Predators in America's Nursing Homes? We often hear excuses and justifications by officials, which we refer to as fairy tales, all of which have been debunked several times over.

1. Offenders living in long-term care facilities are all old

   57% of the offenders were under 65 years of age, as noted in a study by the Government Accountability Office which was patterned after our 2004 and 2005 Predators in America's Nursing Homes reports.

   In A Perfect Cause's 2005 report we cited the following, age breakdown for Registered Sex Offenders living in long-term care facilities across America.

Ages	#	%
Teens	2	0.3%
20's	25	3.3%
30's	54	7.2%
40's	123	16.3%
50's	137	18.2%
60's	155	20.6%
70's	145	19.2%
80's	98	13.0%
90's	15	2.0%
Totals	754	100.0%

* 754 Out of 800 Records Obtained Documented Ages

   When viewing many offenders' photos on sex offender registry sites, people are often amazed at how young and able-bodied so many offenders appear. The question, "What is HE doing in a nursing home?" is a common and emphatic response.

2. Old offenders don't pose a threat

   Consider the case of Ivey Edwards, an 83 year old with a long criminal history who raped the former wife of a U.S. Chief who suffered from Alzheimer's disease, while both lived in a Jacksonville, FL nursing home.

   Mirl King was an 86 year-old child molester who sexually assaulted two women within a two-and-a-half hour period, in a Reno nursing home.

A 91 year old convicted sex offender, Ralph Allen Ridenour, who ripped a nurse's shirt, pulled her pants down and attempted to pull her onto his bed while repeatedly telling her he would rape her, while he resided in a Colorado nursing home.

3. Incapacitated or wheelchair bound offenders are safe

   Ivey Edwards and Mirl King were both in wheelchairs when they assaulted their victims.

   Samuel Irving was a 43 year old, reportedly with five drug, weapons, and robbery arrests on his record when he confessed to raping and beating a 78 year old Brooklyn nursing home resident. The victim was unconscious and bleeding from the mouth. Later she was admitted to the Intensive Care Unit at a local NY hospital. Irving was also a bilateral amputee whose legs were amputated below his knees.

4. Child molesters are safe around old people

   Kind and Edwards both had counts of molesting children.

   So did John Enos, a 68 year old with reported history of rape and abuse of a child, indecent assaults, and sexual battery on a child under 14 years of age. Enos sexually assaulted his 90 year-old male roommate, The roommate was a Merchant Marine during World War II, during which a German U-boat sank his ship and later worked for the Massachusetts Department of Corrections for 40 years.

   Bryan Barefoot was convicted on two counts of lewd molestation. Prior to his conviction, a state competency evaluation noted, "it is the opinion of this examiner that the defendant would pose a significant threat to the safety of others if released. The defendant's behavior that constitutes a threat towards others could continue, despite any treatment, therapy, or training."

   Barefoot was ordered by a judge upon conviction to live in an Oklahoma Intermediate Care Facility for the Mentally Retarded, despite the rules and conditions for supervised probation which ordered him to" stay away from children under the age of 18 years." So why then send him to a facility with adults, with the mental acuity of less than an 18 year old?

   Barefoot was later sent to prison after it was reported to have "promiscuous sexual behavior (he usually chooses young low functioning females who cannot talk well enough to tell on him)" and "he initiated a group session of sexual interaction with several males and one of the lower functioning females."

5. You only need to worry about sex offenders

   Samuel Irving was not a convicted sex offender before his assault on his fellow New York nursing home resident.

   Billy Ray McDaniel had convictions for unauthorized use of a motor vehicle, larceny, and burglary. At 65 years of age, McDaniel was discovered sexually battering an 89 year old female nursing home resident in Oklahoma City.

   Ronald Leddy, a 43 year old with a criminal history of robbery, stolen cars, possession of a pistol, and assaults to commit a felony, was charged with murder and rape in a Rhode Island assisted living facility. He is still pending trial, but

reportedly stabbed a fellow female resident to death and raped the only employee on duty in the facility at the time, a housekeeper.

"Uncle Pat," *Patrick Wilhoite,* had never been caught or convicted of molesting children. His crimes were for larceny, until he sexually assaulted a 3 year-old little girl while she was visiting her great-grandfather in a Richard, Texas nursing home.

6. Nursing homes are capable to handle these offenders

In A Perfect Cause's Predators in America's Nursing Homes 2004 report, the majority of nursing homes had more cited deficiencies than the national average.

In the 277 nursing homes housing registered sex offenders, 156 were cited for neglect and abuse. There were also 110 citations for failure to "give professional services" and "services to keep the highest quality of life possible." Failure to "make sure each resident is being watched" was cited 59 times.

87.6% of the facilities documented less than the national average of 0.7 hours per resident per day. Twelve nursing homes had less than 20% of the national RN staffing hours. 80% failed to meet the national average of total care hours per day.

As well, the number of rapes, assaults, and murders clearly document standard nursing facilities are not capable of providing long-term care for criminal offenders.

7. Prior offenses were minor or they happened long ago

Again, this is clearly not the case.

Excuses that many elderly offenders were simply urinating in public when caught and forced to register defies common sense. Most states did not enact registration laws until the 90's or early 2000's, while exempting offenders who were out of the criminal justice system at that point. In this case, offenders would need to be under 40 years of age to meet that argument.

As well, consider A Perfect Cause's 2005 study.

Years Since Conviction

Range	#	%	Running Total / %	
0 - 4	41	13.4%	41	13.4%
5 - 9	97	31.8%	138	45.2%
10 - 14	95	31.1%	233	76.4%
15 - 19	41	13.4%	274	89.8%
20 - 29	27	8.9%	301	98.7%
30 - 39	2	0.7%	303	99.3%
40 - 49	1	0.3%	304	99.7%
50 - 59	1	0.3%	305	100.0%
Totals	305	100.0%		

* Only 305 Out of 800 Records Obtained
Documented Conviction Dates and Ages

76% were convicted within the past 14 years.

8. Offenders have paid their debt to society

One can question if an offender can ever repay their debt to society. Many victims and / or their families would question if an offender could ever repay the loss caused by rape, assault, or murder.

However, consider the cases of Bryan Barefoot, Billy Ray McDaniel, Sebastian Dipasquale, and others. They were not sent to prison, instead they were sentenced to long-term care facilities.

9. It's not rape, it's consensual sex

What is consensual sex? The term is often used by long-term care facility staff and operators to circumvent reports of rape and sexual assault to state regulators and law enforcement officials. Even law enforcement officers and prosecutors have used this excuse.

The former District Attorney of Oklahoma County dropped charges against a 40 year old who was arrested for raping a 77 year-old resident suffering from Alzheimer's disease.

A statement released by the former District Attorney's Office stated, "after the matter was investigated by the police, it was found that the alleged victim had the ability to consent and did consent to the sexual activity. Yet, the police report clearly stated the victim *"was of unsound mind and that her doctor diagnosed her with Alzheimers Disease with dementia and most of the time the VI (victim) would not be in her right mind."*

In a U.S. Department of Justice sponsored conference on Sex Offender Management and Re-Entry, sexually abusive behavior was defined as"

Any sexual interaction between person(s) of any age that is perpetrated:

- Against the victim's will
- Without consent, or
- In an aggressive, exploitative, manipulative, or threatening manner

Consent was defined as:

- Understanding what is proposed
- Knowledge of societal standards for what is proposed
- Awareness of potential consequences and alternatives
- Assumption that the agreement or disagreement will be respected equally
- Voluntary decision
- Mental competence

A violation of resident rights?

According to the Code of Federal Regulations, Title 42, Subpart B Requirements for Long Term Care Facilities, Part 483.15 Quality of life – A facility must care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life.

(e) Accommodation of needs. A resident has the right to - (1) Reside and receive services in the facility with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other residents would be endangered; and

(f) Activities. ~ (1) The facility must provide for an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interests and the physical, mental, and psychosocial well-being of each resident.

(h) Environment. The facility must provide - (1) A safe, clean, comfortable, and homelike environment, allowing the resident to use his or her personal belongings to the extent possible

Warehousing predators in nursing homes appears to violate these regulations.

What can we do?

We can create federal and state legislation / rules. Appropriate and swift action is required as far too many long-term care residents are in harm's way.

Our recommendations include"

1. Establish separate and secure long-term care facilities for violent and sexual offenders – Use Oklahoma's Legislative Model The Sex Offenders Long Term Care Facility Bill – House Bill 2704
    - A. Security for the residents, staff, visitors, and neighbors
        - * Resident rooms, common areas, entrances, and grounds
    - B. Video and radio frequency monitoring systems
    - C. Onsite security personnel
    - D. Basic state or federal correctional training, for all staff
    - E. Recognizing and defusing potential risk-situation training, for all staff
    - F. Identify physical and psycho-social needs, concerns for special residents
    - G. Social services / activities programs
    - H. Offender Management & Re-Entry Program
    - I. Screening and evaluating care / security staff
    - J. Motivating and counseling staff
    - K. Acceptable furlough policies
    - L. Acceptable standards of care practices

    A separate and secure facility also serves the needs of offenders and their families.

    With area restrictions for registered sex offenders, designated facilities offer simple and effective solutions when making decisions about long-term care needs.

    The above recommendations also offer care and services that fit the psycho-social needs of offenders, over basic warehousing with disabled and elderly residents. This recommendation is all about Appropriate Resident Care.

2. Require criminal background checks for all residents

    This will screen the offenders from non-offenders. Consider apartment complexes that require not only credit checks, but criminal background checks as well. These complexes wish to keep undesirable tenants out, while protecting the peace and safety of other residents.

    Further, these apartment complexes provide a key to their residents to locks on their doors, and these residents allow whomever they choose to come and go as they please. In a nursing home, the residents do not receive a key. Their doors are open 24 hours a day, seven days a week, to whoever is in the facility.

3. Post conspicuous notification if offenders are residing in facilities

4. Make it mandatory for facilities and state agencies to immediately report all criminal acts and suspected criminal acts to law enforcement, while maintaining the possible crime scene

5. Track all criminal acts in long-term care facilities and the assailants who commit these acts

6. Implement policies for video monitoring in facilities and on an opt in basis, residents' rooms

7. Establish policies to deal with consensual sex

Predators in long-term care are bad for business.

While there are those operators who knowingly and in some cases actively solicit criminal offenders for their facilities, the results can have disastrous consequences. Other operators may feel pressured by court orders, local sheriffs, state agencies, and possible discrimination suits by former offenders.

When residents, staff, or visitors are raped, assaulted, or murdered by criminal offenders residing in facilities; operators face likely litigation. Legal expenses, time, and increased insurance premiums take a toll on profitability.

Staff morale and turn-over are factors. Poor morale results in poor performance, resulting in poor care in facilities which can produce fines and / or litigation. Turn-over is expensive in advertising, recruiting, screening applicants, and training all affect the bottom line.

Many families, knowing offenders are residing in the long-term care facility will often choose alternate arrangements. As a result, the operator loses another client.

Yes, predators in long term care facilities are definitively bad for business.

When you put predators in with the prey, somebody's going to get bit.

It is not a question of "If" a criminal act will occur. That question, unfortunately, has already been answered several times over. The only questions that remain until we resolve this issue are Who's next? And when?

In Leviticus, God commands us to stand for our elders. The next time you stand up, please think of God's commandment, our disabled citizens and our elders who are in harm's way.

No one should be left behind.

American Health Care Association

STATEMENT
Of
Tom Coble

On Behalf Of The
AMERICAN HEALTH CARE ASSOCIATION

Before The

House Small Business Subcommittee on Investigations & Oversight
Hearing On
Impact of Predators in Long Term Care on Small Business Operators

July 23, 2008

Thank you Chairman Altmire, Ranking Member Fallin, and members of this subcommittee. I am grateful for the opportunity to be with you here today – and to offer our profession's perspective on the very difficult and complex issue of sex offenders in our nation's nursing facilities. My name is Tom Coble and for the past fifteen years, I have served as President and CEO of Elmbrook Management Company, which operates nine facilities in the state of Oklahoma. I am honored to be here today representing the American Health Care Association (AHCA).

On behalf of the profession responsible for caring for our nation's most vulnerable citizens, I am proud of the advances we have made in delivering high quality long term care services. We remain committed to sustaining these gains in the years and decades ahead – when, as we all know, demand for long term care will by all accounts dramatically increase.

Americans are living longer and our nation's aging population is growing, and many of these individuals have medical or cognitive conditions which require care in a nursing facility. Currently more than three million Americans each year rely on the care and services delivered in one of the nation's nearly 16,000 nursing facilities. The forecast for the demand for nursing facility care is alarming. A March 2008 report from the National Investment Center for the Seniors Housing & Care Industry (NIC) indicates that the demand for long term care services will more than double by 2040.

Even with this high demand, and the rapidly growing needs of the nation's aging population, nursing homes have continued to improve quality. I am proud of the efforts and initiatives advanced by the association that I represent today that seek to enhance and improve quality of care and services provided in our nation's nursing facilities each day.

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Quality – AHCA's First Priority

Long before the words quality and transparency were the catch words of the federal government and their oversight of healthcare, they were truly the compass for the American Health Care Association and its member facilities.

AHCA has been working diligently to change the debate regarding long term care to focus on quality – quality of life for patients, residents and staff; and quality of care for the millions of frail, elderly and disabled individuals who require our services. We have been actively engaged in a broad range of activities which seek to enhance the overall performance and excellence of the entire long term care sector. While keeping patients and their care needs at the center of our collective efforts, we continue to challenge ourselves to improve and to enhance quality.

AHCA is Committed to Quality Care in a Safe & Secure Environment

I am here today to discuss the *Impact of Predators in Long-Term Care on Small Business Operators*. Reported problems involving sex offenders have been rare, but any incident is unacceptable, especially given the age and infirmity of those involved. Some have stated that there is a simple or easy solution to this very complex issue, but unfortunately that is just not the case.

Providing long term care – and other health care services – for those who have any type of criminal past is a critical societal issue, the solution for which must encompasses not only health care providers and their patients but also law enforcement and our health care oversight federal and state agencies. The basic question seems to be what and whose ethical and legal obligation is it to ensure that individuals who have "paid their debt" for prior criminal activity have their health care needs met as members of our society. When these individuals reach an age or exhibit physical conditions or cognitive impairments that require long term care services, where and how should their healthcare needs be met to ensure everyone's safety and security.

When these individuals require long term care, we are legally obligated to provide appropriate care and services. Currently, under Medicare and Medicaid regulations, there is no prohibition for providers who deny admission to their facility solely based on the applicant's status as a sex offender. Absent state law restrictions, nursing facilities may adopt policies to screen and deny admission to convicted sex offenders. In Oregon, for example, recently enacted state law expressly permits facilities to deny admission based on an applicant's prior conviction of a sexual offense.

When individuals who are sex offenders or have a criminal history are admitted to nursing facilities, the current federal law places significant limitations on the provider's ability to transfer/discharge the individual out of the facility. Once the nursing facility discovers that a resident is a convicted sex offender it can only transfer/discharge the individual if it: 1) is necessary for the resident' welfare and his/her needs cannot be met in the facility; or 2) the safety of individuals in the facility are endangered. If the sex offender has exhibited no behavior endangering the safety of others in the facility, the status as an offender may not be sufficient.

Given this nation's aging demographics, we know that these questions and their solutions must be addressed sooner rather than later as the issue will become more pronounced in the coming years.

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As you are aware, nursing facilities provide a residential setting with 24-hour care and services for millions of individuals who require significant assistance due to physical or mental limitations. It is critical for this Committee and others to understand that these facilities fill a necessary role caring for the frail, elderly and disabled who can no longer safely be cared for in their homes or communities.

As health care providers, our mission is to provide quality long term care and services in a safe and secure environment to all requiring such care, regardless of their history.

Assessment Is Critical to Determine Care Needs

The most important aspect of determining appropriate services for any nursing facility patient – including security issues – is the individual patient assessment. Currently, a federally mandated assessment must occur upon admission to a facility, in order to create an individual care plan for each resident that ensures their clinical needs are met, as well as addresses any safety or security concerns.

Care plans are as unique as each resident in a nursing facility and are based upon the assessment as well as the known history of each patient. A resident who is known to have a criminal history or is known to be a registered sex offender may or may not require additional supervision or separation from the general facility population. In fact, the individualized care plan for a convicted criminal or sex offender in a persistent vegetative state would clearly be very different from an ambulatory resident who has no criminal past, but has exhibited behavioral issues.

GAO Report on Sex Offenders in Nursing Facilities

In 2006, the Government Accountability Office (GAO) issued a report entitled, *LONG-TERM CARE FACILITIES: Information on Residents Who Are Registered Sex Offenders or Are Paroled for Other Crimes*. The report stated clearly that, "Having a prior conviction typically is not sufficient to subject offenders to supervision or separation requirements that differ from those for other residents." The GAO went on to indicate that "several long-term care ombudsmen, industry association officials, and facility officials in the states we reviewed indicated that the residents they are most concerned about in terms of behavioral problems are those with mental illness, particularly dementia, for which behaviors are apt to change as the disease progresses."

The GAO report also stated that "even if long-term care facilities wanted to impose different supervision and separation requirements on offenders, their ability to do so is limited because they are not always aware of residents' prior convictions."

While the May 2006 GAO study focused on the issue sexual offenders residing in nursing facilities, we were dismayed that that the report stopped short of issuing any recommendations about how the profession should address this issue.

Barriers to Change

Presently, in most states, long term care facilities are not notified by law enforcement officials of an incoming resident's status as a sex offender or of their criminal background. Only if a facility is

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notified of the offender's past, can they evaluate the potential risk posed by former sex offenders on an individual basis, similar to their assessment of patients with other behavioral or psychological issues.

For many years the long term care profession has encouraged law enforcement authorities to better and more consistently provide nursing facilities with relevant information regarding the criminal background and sex offender registration status of individuals requiring long term care.

While the patient's history may contribute to, and alter, the individual care plan, it is important to understand that even with the information as to a patient's criminal past, long term caregivers may be subject to federal anti-discrimination laws and thus, be unable to deny admission. Perhaps, more significant, is the strict federal and state discharge requirements, which I have already discussed, that may prevent the timely discharge of patients discovered to have a criminal past or more significantly be exhibiting behaviors that actually pose safety and security issues.

Another complicating factor in this complex issue is the notification of staff, residents and family members about the individual's criminal background or status as a registered sex offender. We believe that as a health care provider posting of such information would be a violation of the Privacy Rule issued under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

An additional concern when addressing the issue of sexual offenders in long term care facilities on a national basis is the fact that currently there is no federal definition of sex offenders, nor is their a national registry or database. Definitions vary from state to state, as do registries.

Recommendations for Change

As there is no current federal definition of "sex offender" it is difficult to propose a "one-size-fits-all" solution to this issue facing long term care residents, caregivers and providers. Despite this hurdle, we propose that state departments of corrections and supervisory agencies – or other law enforcement entities – notify a long term care facility if the agency knows that a registered sex offender is seeking admission to a facility.

Also, it is clear that federal and state governments have a responsibility to establish policies that deal effectively with how nursing homes can protect their vulnerable patients and residents, yet at the same time complies with state and federal laws regarding privacy.

In order to provide nursing facilities with the information critical to assess the complete needs of each patient, we encourage adoption of a federal definition of sex offenders. Based upon this definition, we recommend the development of a standard national database that would enable facilities and long term care providers to proactively check the database for known offenders. While we believe the responsibility to notify a long term care facility if a registered sex offender is seeking admission to a facility – or is being court-ordered into its care – rests squarely on law enforcement, the development of a national database would provide enhanced tools in assessing patient needs.

Overall, AHCA believes that health care providers, government oversight agencies and law enforcement must come together whether on a state or national level to begin to address reasonable and appropriate solutions to this growing problem.

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Conclusion

Long term care facilities are vital to our nation's aging population, and will only become more so as the number of Americans requiring care continues to increase. As the caregivers for this growing population, nursing homes have an obligation to provide care to all individuals who need it, regardless of their past.

AHCA is deeply concerned about the issue of sexual predators in nursing homes, and will continue to work to ensure that all residents, families, and staff are safe in their facilities. However, facilities can only do so much in the current system, and law enforcement and Congress must act to provide critical patient information so we as providers can ensure the safety of all residents. A national database of sex offenders, as well as a consistent and standard definition of the term, need to be created. Nursing homes need to be informed of incoming patients' criminal backgrounds, in order to help them better assess the patients' needs. Policymakers and law enforcement also have a responsibility to provide clear policies for long term care facilities to deal with this issue; these policies must address resident protection as well as compliance with federal privacy laws.

AHCA is committed to quality long term care for all residents, and we are continually working to improve and enhance quality in all facilities. Resident safety is an important component of our quality care, and we continue to strive to ensure that all residents are safe in their facilities. To improve these already high standards of safety, however, Congress and law enforcement need to act. A collaborative effort between long term care providers, Congress, and law enforcement is necessary to achieve the highest levels of safety for all residents.

I would like to end my testimony today on a personal note. I have four family members living in our facilities right now, including my mother and my wife's grandfather. I live in the community where I was born, raised and will be buried. Every day I help to take care of the people who helped raise, educate and prepare me for life. I take the responsibility of caring for them very seriously, and I strive to provide the highest quality of care possible. I think that everyone in this room is acutely aware of the shortage of licensed nurses, certified medication aides and certified nurse aides in health care. Long term caregivers have many employment choices, but they choose to come to work in our facilities each day, providing care to the frailest of our society. They are the heroes of long term care and I entrust the care of my loved ones to them each day.

Thank you for the opportunity to offer these comments on behalf of millions of professional, compassionate long term caregivers and the millions of frail, elderly, and disabled Americans they serve each day. I look forward to responding to your questions.

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Statement of Sean P. McDonough, Esquire regarding the Impact of Predators in Long-Term Care on Small Business Operators

I have been asked to provide testimony on the issue of the impact of predators in long-term care facilities on small business operators. My perspective on this issue is informed by the extremely tragic consequences of one case in which my partner, Patrick E. Dougherty, and myself represented Mrs. Lillian Guernsey and her son, Thomas Itterly, arising out of two documented sexual assaults perpetrated upon Mrs. Guernsey by 31 year old Daniel Statham. A brief overview of the circumstances surrounding Mr. Statham's admission to the Country Living Personal Care Home in Nicholson, Pennsylvania, demonstrate in graphic fashion the need for legislation to assist small business operators in avoiding the myriad of problems associated with accepting sexual offenders at their facilities without appropriate screening or consideration as to whether these individuals should be accepted into a setting where some of our most vulnerable citizens are placed for care. Steps need to be taken to ensure that our elderly and infirm citizens do not suffer the type of violent attack experienced by Lillian Guernsey at the hands of Daniel Statham.

Lillian Guernsey was born on November 19, 1915 and was 86 years of age at the time that she was raped by Daniel Statham on February 27, 2002. At the time of the attack on Mrs. Guernsey she and Statham were both residing at the Country Living Personal Care Home located in Wyoming County, Pennsylvania. At the time that she was attacked by Statham, Mrs. Guernsey was suffering from a moderate form of dementia. While residing at the Country Living Personal Care Home, Statham was not under the supervision of any probation department nor had any employee of the personal care home, other than its owner and administrator, had any knowledge of Statham's past criminal history.

The shocking circumstances surrounding the placement of Statham at the Country Living Personal Care Home by the Court System and Adult Probation Department of Northumberland County serve as further compelling evidence as to the need for governmental oversight of this problem.

Daniel Statham was born on August 6, 1970. By the time Statham arrived at the Country Living Personal Care Home, he had had eight prior adult arrests, three convictions and two adult commitments to correctional facilities. Statham also had a lengthy prior juvenile criminal history. One of his juvenile arrests involved an arson charge in which Statham admitted to setting a fire in an Episcopal Church in Honesdale, Pennsylvania. In February of 1992, Statham was charged with rape, involuntary deviate sexual intercourse, aggravated indecent assault, corruption of minors and indecent assault. In February of 1992, Statham was arrested for burglary, theft by unlawful taking, and criminal trespass. Approximately six months later in August of 1992 Statham was arrested for burglary, criminal trespass, theft by unlawful taking, and receiving stolen property. Two years later, Statham was arrested in Lackawanna County, Pennsylvania and charged with four counts of aggravated assault, one count of simple assault, one count of recklessly endangering another person, one count of unlawful restraint, eight counts

of disorderly conduct, one count of criminal mischief, one count of resisting arrest and one count of terroristic threats. Approximately three months later in December of 1994, Statham was arrested in Lackawanna County, Pennsylvania, for assaulting his girlfriend. As a result of the December 1994 offenses he was sentenced to serve one to three years in prison. Statham subsequently pled guilty to a charge of aggravated indecent assault in Wayne County, Pennsylvania, and he was sentenced to serve three to six years in a state correctional institution. The victim of the crime which resulted in the imposition of the three to six year prison sentence was a thirteen year old female whom Statham had taken into a wooded area and had had intercourse with the young child. Statham admitted in a subsequent interview with the Sexual Offender Assessment Board[1] that he was intoxicated at the time of that assault. As will be noted in the description of the attack on Mrs. Guernsey, Statham stated he was intoxicated when he raped Mrs. Guernsey as well. As can be seen from Mr. Statham's lengthy criminal history, this individual was hardly a candidate to be housed as a resident at a personal care home.

The circumstances which surround Statham being placed at the Country Living Personal Care Home serve to demonstrate the need for alternative facilities to be created to house individuals who live with the type of behavioral problems as Daniel Statham. In Statham's case, the Court and Adult Probation Department of Northumberland County apparently had no access to an appropriate facility for someone like Statham. It was for that reason that he wound up at the Country Living Personal Care Home. As stated above, Statham had been sentenced to a three to six year prison term at the State Correctional Institute at Coal Township, Pennsylvania. During his time at SCI-Coal Township, Statham had been charged with a number of disciplinary violations and was unwilling to complete a sexual offender treatment program deciding instead to "max out" his sentence. At the completion of his sentence he was required to provide the Commonwealth of Pennsylvania with a permanent address where he would be living upon his release from prison. Unable to do so, officials from the State Correctional Institution contacted the Pennsylvania State Police advising them that Statham was in violation of Megan's Law[2] and should be arrested and taken to the Northumberland County Prison. While at the Northumberland County Prison, Statham was placed in contact with MaryJo Christiano who was employed as a counselor with a social service agency which had a contract with the Northumberland County Adult Probation Department. Officials form the Northumberland County Prison did not want Statham in their facility but did not have a mechanism in place to ensure that Statham was referred to a facility which would be appropriate for him to reside. At the time of his sentencing in the Court of Common Pleas of Northumberland County on October 2, 2001, for failing to have an address as required by the Megan's Law, the Judge presiding in the case sentenced Statham to time served and placed him on six months probation.[3] Unfortunately,

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[1] The Sexual Offender Assessment Report of December 20, 2002, is incorporated into this Statement as Exhibit "A".

[2] The Pennsylvania Statute requiring registration by address of individuals who have either been convicted or plead guilty to certain sexual offenses. 18 Pa. C.S. §9795(A)(1).

[3] The transcript of the proceedings for Statham's guilty plea and sentencing in Northumberland County is attached to this Statement as Exhibit "B".

when the Judge who presided over Statham's sentencing made an inquiry as to whether probation would be in the mitigated range, the probation officer responded "I have know idea. We have no information on the Defendant at all." Therefore, Statham was permitted to leave the Northumberland County Prison and go to Country Living Personal Care Home without even a rudimentary pre-sentence investigation having been performed. The Order that was ultimately entered by the Court[4] provided with respect to Statham's living arrangements nothing more than the following:

> **The Court directs the Defendant to take a bus to a half-way house in Scranton and to maintain his residence in Northumberland County.**

Prior to Statham's sentence, arrangements had been made for him to be admitted as a resident at the Omni One Personal Care Home which was owned by the mother of Shirley Sheridan, who owned the Country Living Personal Care Home where Statham raped Mrs. Guernsey. It was established during the civil trial between Mrs. Guernsey and Country Living Personal Care Home that the personal care home, through Shirley Sheridan, had agreed to accept Mr. Statham knowing that he had been convicted of a sex offense. MaryJo Christiano, the individual who was charged with the responsibility of finding a location for Statham to reside, indicated that she contacted the Department of Public Welfare and asked for a list of available "boarding homes" in the Commonwealth of Pennsylvania. Christiano indicated that she notified the Omni One Personal Care Home that Statham was currently incarcerated at the Northumberland County Correctional Facility and she indicated that she had made the disclosure that Statham was a Megan's Law offender.[5] It was established during Mrs. Guernsey's trial against Country Living that Christiano had notified the administrator of the Omni One Personal Care Home that Statham had been incarcerated at SCI-Coal Township for six years for rape. Notwithstanding these disclosures, Omni One and subsequently Country Living Personal Care Home both agreed to accept Statham as a resident.

Statham was originally transported to the Omni One Personal Care Home by Sheriff's Deputies from Northumberland County who had him handcuffed and shackled. Statham was moved from the Omni One facility after only a couple of weeks because he had started a small fire in a charcoal grill on the back porch thereby posing a danger the residents at the Omni One facility. It was thought that because of the fact that there were additional personnel at the Country Living Personal Care Home that Statham would find more things to keep him occupied at Country Living.

Upon his transfer to the Country Living Personal Care Home, Statham was placed on the second floor of the facility with only two other residents, a fifty-one year old male named Robert

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[4] The Order of October 2, 2001, is attached to this Statement as Exhibit "C".

[5] The Memorandum Opinion in which these factual assertions were established authored by United States District Magistrate Judge Thomas Blewitt is attached to this Statement as Exhibit "D".

Ball and Mrs. Guernsey. The events of February 27, 2002, could have been prevented if the initiatives which have been proposed to the Committee this morning had been implemented. The Sexual Offender Assessment Report which has already been referenced sets forth in horrible and graphic detail the indignities visited upon Lillian Guernsey by Daniel Statham on that evening. Lillian's story needed to be told as to what went wrong and the circumstances which led to her brutal victimization unfolded during a trial which occurred four years to the date of those tragic events. From February 26, 2006 to and including March 1, 2006, sworn testimony was presented to Judge Blewitt which painted a clear picture of the events leading up to the attack on Lillian Guernsey. Several days after Statham's assault on Mrs. Guernsey, her son Tom Itterly was notified of what had taken place. Tom traveled to Northeastern Pennsylvania to bring his mother home to be near him in Memphis, Tennessee. He cared for his mom at his own home as best he could until it became impossible to attend to her needs. She lived out her days in a nursing home outside of Memphis. Lillian Guernsey died within two months of the conclusion of the trial brought on her behalf against Country Living Personal Care Home. She was 90 years of age at the time of her death. As a result of the attack on Lillian Guernsey, Daniel Statham was charged with rape, sexual assault and indecent assault. He is serving an extended prison sentence at the State Correctional Institution at Camp Hill.

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