

THE NURSING HOME RESIDENT PROTECTION AMENDMENTS OF 1999

HEARING
BEFORE THE
SUBCOMMITTEE ON
HEALTH AND ENVIRONMENT
OF THE
COMMITTEE ON COMMERCE
HOUSE OF REPRESENTATIVES
ONE HUNDRED SIXTH CONGRESS
FIRST SESSION

ON

H.R. 540

FEBRUARY 11, 1999

Serial No. 106-1

Printed for the use of the Committee on Commerce



U.S. GOVERNMENT PRINTING OFFICE

55-152CC

WASHINGTON : 1999

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-058409-4

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THE NURSING HOME RESIDENT PROTECTION AMENDMENTS OF 1999

THURSDAY, FEBRUARY 11, 1999

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON HEALTH AND ENVIRONMENT,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:40 p.m., in room 2322, Rayburn House Office Building, Hon. Michael Bilirakis (chairman) presiding.

Members present: Representatives Bilirakis, Stearns, Deal, Bilbray, Whitfield, Coburn, Cubin, Shadegg, Bryant, Brown, Pallone, Stupak, Barrett, Capps, Eshoo, and Dingell.

Staff present: Marc Wheat, majority counsel; Tom Giles, majority counsel; and John Ford, minority counsel.

Mr. BILIRAKIS. I call to order this hearing on H.R. 540, the Nursing Home Resident Protection Amendments of 1999.

The subcommittee's consideration of this legislation today is an important step in protecting the health and dignity of nursing home residents who rely on Medicaid to meet their long-term care needs.

Last year, Congressman Jim Davis and I introduced a similar bill in response to a heart-wrenching incident that occurred in Tampa, Florida. In April 1998, a Tampa nursing home operated by Vencor, Inc., attempted to evict over 50 Medicaid residents under the guise of remodeling the facility. Thanks to the quick and dedicated action of Nelson and Geri Mongiovi, a court halted the evictions. Mr. Mongiovi's mother was one of the Medicaid residents targeted for eviction.

At this time, on behalf of the committee, I'd like to express my sympathy and condolences to Mr. and Mrs. Mongiovi on the recent loss of that great woman, his mother.

Unfortunately, similar efforts have also been reported in other States. To end this outrageous practice, our bill adopts a simple and fair approach. It would extend protections against eviction to all individuals who reside in a nursing home at the time the facility chooses to withdraw from participation in Medicaid. It would not force nursing homes to remain in the Medicaid Program, and they may continue to decide which residents are admitted to their facility in the future.

If a nursing home decides to voluntarily withdraw from the Medicaid Program, our bill requires the facility to provide clear and conspicuous notice to future residents that it does not accept Medicaid payments. This protection will prevent individuals from enter-

ing a facility with the expectation that they can remain once they exhaust their personal assets.

H.R. 540 is not a remedy for the broader problems in our Nation's long-term care system. However, it does address one serious concern by ensuring that nursing home residents and their families will not have to live with the fear of eviction. Enactment of this legislation will remove that threat and protect these vulnerable individuals.

I'm pleased we were able to draft a responsible bill that enjoys the support of both seniors' advocates and the nursing home industry. I particularly appreciate the work of my ranking member, Mr. Brown, the full committee's ranking member, Mr. Dingell, and their staff in developing this bipartisan legislation. I also want to commend my Florida colleagues, Congressman Jim Davis, and Senator Bob Graham, for their leadership on this issue.

Finally, I want to thank all of our witnesses for taking the time to share their views on H.R. 540 with us. Again, I would like to extend a special welcome to Nelson and Geri Mongiovi, who traveled from Tampa to join us today.

I'm hopeful that today's hearing will establish a solid record of support for the bill and the momentum necessary to enact it into law early this year.

I look forward to working on a bipartisan basis to secure committee approval of the bill when the House returns from the President's Day district work period.

The Chair would now recognize Mr. John Dingell, the ranking member of the full committee. Mr. Dingell, do you have an opening statement, sir?

Mr. DINGELL. Mr. Chairman, you are most kind. Thank you.

First, let me commend you for this hearing and for your leadership in developing the legislation before us today, the Nursing Home Resident Protection Amendments of 1999. I particularly want to note and commend the efforts of Mr. Davis of Florida, who has done an outstanding job in providing leadership in this matter, and also Senator Graham for his leadership in the other body and for sponsoring a companion piece of legislation.

I also want to thank all of my other colleagues on this committee and elsewhere who have worked to ensure that nursing homes can no longer evict residents who depend on Medicaid to pay their bills as is prescribed in this legislation. Today's hearing is a key step toward ending the outrageous practices of some nursing home operators.

I want to thank you again for holding this hearing. I look forward to working with you throughout the rest of the legislative process.

The bill was drafted in response to a nursing home vendor that began to selectively evict Medicaid residents from a Tampa facility last April. The State of Florida, the Health Care Financing Administration, the Senior Citizen Advocacy Committee all responded and the facility agreed to halt this discriminatory and evil practice. All Medicaid residents who had been displaced were returned to the nursing home.

Federal legislation is needed today to ensure that all 1.6 million elderly and disabled nursing home residents across the country are

protected from similar egregious and outrageous evictions in the future. Currently Medicare and Medicaid nursing home residents are protected under the Omnibus Budget Reconciliation Act of 1987 against inappropriate transfers and evictions. Medicaid residents, however, are not protected from eviction if a nursing home voluntarily withdraws from the Medicaid Program.

Protections for Medicaid residents are essential because two-thirds of the nursing home residents receive Medicaid benefits. Many seniors who are not eligible for Medicaid when they enter nursing homes will become eligible during their residency. Medicare does not cover custodial care and only pays for a number of limited days of skilled nursing care. So oftentimes, seniors must pay their own bills. Nearly 90 percent of the residents who begin their stay as private payers are expected to exhaust their personal resources within 1 year. All but the wealthiest seniors live with the possibility of eviction from their nursing homes should the facility withdraw from the Medicaid Program.

This bill will end the fear and uncertainty based on payment status. All current nursing home residents, both those who are Medicaid-eligible at present and those who become eligible during their stay would be protected.

I am pleased that my colleagues and the majority of the committee, and my colleagues on the minority have worked together so well and that my colleagues in the majority have shown that they can react so quickly to a legitimate need. I hope are they similarly expeditious in enacting strong, comprehensive protections for patients enrolled in managed care organizations.

Mr. Chairman, I again commend you and I thank you.

[The prepared statement of Hon. John D. Dingell follows:]

PREPARED STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF MICHIGAN

Mr. Chairman, thank you for your leadership in developing the legislation before us today, the Nursing Home Resident Protection Amendments of 1999. I particularly want to note the efforts of Mr. Davis, and I commend Senator Graham for his leadership in the other body and for sponsoring a companion bill. I also want to thank my other friends and colleagues who have given their time and support to this matter.

This bill would ensure that nursing homes can no longer evict residents who depend on Medicaid to pay their bills. Today's hearing is a key step toward ending the outrageous practices of some nursing home operators. I thank our subcommittee chairman for holding this hearing, and I look forward to working with him throughout the rest of the legislative process.

This bill was drafted in response to a nursing home vendor that began selectively evicting Medicaid residents from a Tampa facility last April. The State of Florida, the Health Care Financing Administration, and the senior citizen advocacy community all responded, and the facility agreed to halt this discriminatory practice. All Medicaid residents who had been displaced were returned to the nursing home.

Federal legislation is needed to ensure that all 1.6 million elderly and disabled nursing home residents across the country are protected from similarly egregious evictions in the future. Currently, Medicare and Medicaid nursing home residents are protected under the Omnibus Budget Reconciliation Act of 1987 against inappropriate transfers and evictions. Medicaid residents, however, are not protected from eviction if a nursing home voluntarily withdraws from the Medicaid program.

Protections for Medicaid residents are essential because two-thirds of all nursing home residents receive Medicaid benefits. Many seniors who are not eligible for Medicaid when they enter a nursing home will become eligible during their residency. Medicare does not cover custodial care and only pays for a limited number of days of skilled nursing care, so oftentimes seniors must pay their own bills. Nearly 90% of residents who begin their stay as private payers are expected to exhaust

their personal resources within one year. All but the wealthiest seniors live with the possibility of eviction from their nursing home should the facility withdraw from the Medicaid program.

This bill would end the fear and uncertainty of eviction based on payment status. All current nursing home residents, both those who are Medicaid-eligible at present and those who become eligible during their stay, would be protected. If a facility voluntarily withdrew from the Medicaid program, the facility would be required to continue to care for all residents admitted to the home up until that date. Residents who entered the home after the facility withdrew from the program would be provided with clear and adequate notice explaining that the home does not accept Medicaid. New residents would be able to prepare for alternative arrangements should they become eligible for Medicaid in the future.

I am pleased that my colleagues in the majority on this committee have shown that they can move quickly to enact protections for nursing home residents. I hope that they are similarly expeditious in enacting strong, comprehensive protections for patients enrolled in managed care organizations.

Mr. BILIRAKIS. I thank the gentleman so very much.

The Chair now recognizes the ranking member of the subcommittee, Mr. Brown.

Mr. BROWN. I'd like to thank Chairman Bilirakis for scheduling today's hearing and commend my colleague, Jim Davis of Florida, for introducing this important and timely legislation that will be the focus of our discussion today.

H.R. 540, the Nursing Home Resident Protection Amendments of 1999 closes a loophole in the Federal protections established to ensure fair treatment of nursing home residents. Under current law, Medicare and Medicaid nursing home residents are protected from inappropriate evictions and transfers. However, Medicaid and pre-Medicaid nursing home residents lose this protection if a nursing home voluntarily withdraws from the Medicaid Program.

This bill eliminates that exception and says that a nursing home cannot retrospectively imply a change in policy in order to selectively evict or transfer residents undercutting the care they and their families have come to trust.

The tragic situation H.R. 540 would prohibit is not theoretical, it's real. As Mr. Dingell and Mr. Bilirakis said, last April a nursing home in Tampa began selectively evicting Medicaid residents under the cover of its decision to stop accepting reimbursement from Medicaid. Long-term care typically means continuity, but not in this case. Fortunately, this particular vendor listened to the many voices condemning its actions and invited the evicted residents to return to the facility.

While I am grateful to the advocates inside and outside of government that helped bring about this reversal, notably Mr. Davis and Mr. Bilirakis, the final outcome does not erase the trauma that Medicare beneficiaries and their families experienced. Unfortunately, what happened in Tampa may not be an isolated case. Nursing homes in Florida and Indiana made the headlines but we simply don't know how many other facilities evicted or transferred Medicaid beneficiaries under objectionable pretenses but managed to avoid the spotlight.

It's our job now to eliminate any gray area and preempt future tragedies. There are 1.6 million elderly and disabled nursing home residents in the United States. Over 1 million of them, about 70 percent, are Medicaid beneficiaries, numerous others are pre-Medicaid. That is, they are exhausting their limited assets to finance their nursing home care and will ultimately qualify for Medicaid

coverage. With this bill, we can assure that these individuals' nursing home will not use a loophole in the law to abandon them.

I'm proud to be an original co-sponsor of H.R. 540. I'm especially pleased the subcommittee was so quick to act on this issue in keeping with its leading responsibility for health care policy. I hope, Mr. Chairman, that this constructive, bipartisan initiative is the first of many this year.

Mr. BILIRAKIS. I trust.

The gentlelady from Wyoming, Ms. Cubin, for an opening statement.

Ms. CUBIN. Mr. Chairman, I have a written opening statement but I'll just submit it for the record.

[The prepared statement of Hon. Barbara Cubin follows:]

PREPARED STATEMENT OF HON. BARBARA CUBIN, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF WYOMING

Like every member of this subcommittee, I am very concerned about the quality of care afforded to our senior and disabled citizens. Very often, these are some of the most vulnerable members of our society. We must work to ensure that their rights are protected, while preserving the rights of the nursing home owners.

As a general rule, I favor limiting the role of government in our lives. However, I recognize there are areas where government must be involved.

The events at the Rehabilitation and Healthcare Center of Tampa are very disturbing to me. I am particularly concerned that Medicaid recipients at the center were targeted for eviction. It is also disturbing that these residents were not told the real reason they were being removed from the center.

Before tackling this issue, it is vital to know all the facts. I look forward to hearing your testimony today, and I appreciate the unique perspective each of you will be able to add to this debate.

Mr. BILIRAKIS. Thank you.

Mr. Bilbray, do you have an opening statement?

Mr. BILBRAY. Mr. Chairman, I'd just like to congratulate you, the ranking member and the individuals who have drafted this law.

I'd also like to personally thank you for being willing to find answers in the west that may be applicable to the problems that we find back here in the east, and most importantly, admitting that it may have come from the west and may be a good idea.

I think in all reality, I'd like to echo the ranking member's statement that I hope this is a good example of the type of bipartisan effort. We address a problem, we don't demagogue it, we don't try to take political advantage; we just try to serve the public and get the job done. I think this piece of legislation does it.

It's not punitive against nursing homes. Let me just say, I like it because it really is not punitive against nursing homes; it just sends a clear signal to them where the boundaries are of proper behavior in a civilized society and makes it clear. I hope we see this not just move through this committee but make it to the House, get to the Senate and see the President's signature on it as soon as possible.

I yield, Mr. Chairman.

Mr. BILIRAKIS. Thank you.

Mr. Stupak, do you have an opening statement?

Mr. STUPAK. Mr. Chairman, I just want to thank you and Mr. Davis and others for bringing this bill forward. I'm an original co-sponsor and we'll do what we can to get it passed. Thanks again, Mr. Davis, for bringing it to our attention.

Mr. BILIRAKIS. Thank you.

Mr. Deal, do you have an opening statement?

Mr. DEAL. Thank you, Mr. Chairman.

I appreciate your holding the hearing. I've read the statements of the witnesses. I think it's an issue that needs to be addressed and I will not have any further opening statement.

Mr. BILIRAKIS. Thank you.

Mr. Pallone, do you have an opening statement?

Mr. PALLONE. Mr. Chairman, let me submit my statement for the record in full, if I could.

I just wanted to say again that I think the specific issue at hand, protecting Medicaid and likely Medicaid nursing home patients from being evicted from nursing homes, is one that this Congress could readily fix by passing this bill. Therefore, we should simply proceed to get it out of here and pass it as quickly as possible.

I did want to say one thing. I know today we're not going to get into other aspects of nursing home care but I wanted to mention that there is a lot of discrimination confronting Medicaid beneficiaries. I hope that, if not today, at some time in the future, we can get into some of those other concerns.

Some States, for instance, have requirements governing the number of Medicaid beds that homes must carry. My home State of New Jersey just released a report, the first of its kind in the State, which graded all nursing homes in the State based on the number of standard violations they had, including discharges of residents.

This type of thing or these approaches to look at some of the problems with Medicaid placement and discrimination I think need to be looked at more fully, if not today at some other time.

I do want to congratulate Mr. Davis and the chairman for introducing this bill and moving on it so quickly.

Mr. BILIRAKIS. I thank the gentleman.

Mr. Bryant, do you have an opening statement?

Mr. BRYANT. Thank you, Mr. Chairman.

I, too, would like to thank Mr. Davis for bringing this bill forward. I think Mr. Bilbray said what I would like to say in terms of it not being punitive in nature and therefore, I would associate myself with his remarks and yield back the balance of my time.

Mr. BILIRAKIS. Thank you.

Mr. Barrett?

Mr. BARRETT. Thank you, Mr. Chairman.

First, I'd like to thank you for holding the hearing on this important bill and to thank Mr. Davis and the others for introducing it.

Given the amount that individuals pay to live in a nursing home, it's not shocking that at some point most individuals will spend their assets down to the level where they are eligible for Medicaid. It's simply wrong for a nursing home who has readily accepted an individual paying and then seeing the individual move to Medicaid to then force them out.

Whether the person initially goes into the nursing home as a Medicaid patient or as a private pay patient and then ultimately relies on Medicaid, I think it's incumbent upon us to make sure that they're not throwing these people out on the street.

Mr. BILIRAKIS. Certainly that's what we're intending to do here.

Mr. Whitfield, do you have an opening statement?

Mr. WHITFIELD. Mr. Chairman, thank you very much.

All of us are looking forward to this hearing which will certainly focus upon the needs of Medicaid patients as relates to nursing home care. I notice we have eight witnesses, all of whom have good stories to tell or bad stories to tell.

Also, I'm looking forward to the testimony of Mr. Hash, particularly as it relates to steps that HCFA is taking to provide information so that people can make educated choices about nursing home care.

I want to commend you and Mr. Davis for bringing this matter to our attention. I'll file my opening statement for the record and look forward to the hearing.

Mr. BILIRAKIS. Thank you.

Mr. Shadegg?

Mr. SHADEGG. Thank you, Mr. Chairman.

I simply want to commend you for holding this hearing today. I will put my full opening statement in the record and indicate my interest in hearing the testimony of the witnesses.

Mr. BILIRAKIS. Thank you.

Mr. Stearns?

Mr. STEARNS. Thank you, Mr. Chairman.

I will make my opening statement a part of the record.

Mr. BILIRAKIS. Without objection, the opening statements of all members of the subcommittee are made a part of the record.

[Additional statements received for the record follow:]

PREPARED STATEMENT OF HON. TOM BLILEY, CHAIRMAN, COMMITTEE ON COMMERCE

Thank you Mr. Chairman for holding this hearing today. I also want to thank our colleagues, Congressman Jim Davis and Senator Bob Graham, for joining us this afternoon.

It has been said that the character of a nation is best demonstrated by how it cares for the most vulnerable of its population. The legislation which Chairman Bilarakis and Mr. Davis have introduced is about fairness to our nation's most vulnerable individuals.

Nursing homes that contract with Medicaid, and then discriminate against patients based on the way in which their care is financed is unacceptable. Seniors may select a facility *because* it accepts Medicaid. It is unfair for a facility to offer itself as participating in Medicaid, accept a resident who may be relying on future Medicaid assistance, wait until after a resident settles into his or her new surroundings, and then ask them to leave once their personal resources are exhausted, and Medicaid starts paying their bills.

The evictions which spurred the need for this legislation are disturbing. I hope this hearing will elucidate some of the discriminatory practices nursing home residents are facing, and how widespread the problem is. I look forward to hearing the perspective of the Health Care Financing Administration on their role in curbing such abuse, as well as comments from the other witnesses on the impact this legislation will have on addressing the problem before us.

PREPARED STATEMENT OF HON. DIANA DEGETTE, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF COLORADO

Thank you for holding this hearing today Mr. Chairman. As a cosponsor of this legislation in both the 105th and 106th Congress, I am pleased that we are protecting nursing home patients receive quality care irrespective of their means of payment.

I was shocked to learn about the malevolent expulsion of a select group of seniors from a nursing home facility simply because Medicaid pays for their medical care. At a time when so many Americans in my generation are making the difficult decision to place a parent in a long term care facility, malicious acts like this are disturbing and unacceptable.

Perhaps what is most troubling is that the victims of these expulsions were the most vulnerable residents at this facility. These were the patients who had exhausted their personal resources paying for nursing home care.

In Colorado 64% of the overall nursing home population are Medicaid beneficiaries. Because of the expense involved in long-term care, many seniors rely on Medicaid after other resources run out. It simply makes sense that Congress protect nursing home residents on Medicaid from this sort of discrimination.

I look forward to hearing from our panelists today. Congressman Davis' legislation is a step in the right direction to protect patients residing in nursing homes. It is critical that we ensure nursing home residents are not constantly at risk of being thrown out on the street. It is also vital that we make sure long-term care does not become a two-tiered system where patients who can afford to pay get a higher level of care than those who are forced to exhaust their personal financial resources.

PREPARED STATEMENT OF HON. ANNA G. ESHOO, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF CALIFORNIA

Thank you Mr. Chairman.

I'd like to start by thanking the sponsors of this very important legislation—my colleague from Florida, Mr. Davis. Our distinguished chairman, Mr. Bilirakis. And, of course, the distinguished Ranking Member, Mr. Dingell.

For many of us here today, this legislation hits home.

Some of our parents are being cared for in nursing homes.

The thought that they might be kicked out of their homes because they pay for their care with Medicaid rather than with private dollars is abhorrent and offensive.

Our Nation's elders deserve better than that.

They deserve to live in healthy, secure environments.

They deserve to know that their nursing home will not abandon them if it later chooses to opt out of the Medicaid program.

They deserve peace of mind.

Nursing homes, and the companies that own them, must be required to honor the promises they make to their residents when they first entrust their care to them.

So, again I thank the sponsors of the Nursing Home Resident Protection Amendments and I look forward to hearing the testimony of our speakers.

Mr. BILIRAKIS. For those of you who are new to this process, the bells that you hear mean there is a vote on the floor. So we're going to have to adjourn for just a few minutes, run over to the floor, cast our votes. I understand it is the last vote of the day so this should be the only interruption we will have.

Then we will start with the first panel consisting of Mr. Davis right after we return.

Thank you.

[Brief recess.]

Mr. BILIRAKIS. The first panel was to consist of Senator Bob Graham of Florida and Mr. Jim Davis of Tampa, Florida. Mr. Graham, I understand is not able to make it for obvious reasons. I think he has a statement which, by unanimous consent, will be made a part of the record.

[The prepared statement of Senator Bob Graham follows:]

PREPARED STATEMENT OF HON. BOB GRAHAM, A U.S. SENATOR FROM THE STATE OF
FLORIDA

Mr. Chairman: I would like to begin my remarks by thanking you for convening this critical hearing and for inviting me to testify. I commend you and Representative Davis for your leadership in solving the dilemma of how we can best protect one of the most vulnerable populations in society—senior citizens in nursing homes.

I would also like to take a moment to thank Nelson and Geri Mongiovi for taking the time and effort to drive all the way from Tampa, Florida to participate in today's hearing. The last few months have been particularly difficult for the Mongiovi family, having lost Nelson's wonderful mother, Adela, over the holidays last year. I know that Adela would be proud of her son Nelson and his wife Geri for having con-

tinued to push for legislation to protect all senior citizens who find themselves vulnerable to unscrupulous practices by nursing homes.

Let me recount briefly what has transpired to bring us to this point today. On April 7, 1998, the *Wall Street Journal* ran a story which documented several cases of patient dumping across the nation, including cases involving seniors in Indiana and Florida. I'd like to quote briefly from this story:

"On Monday, January 26, [1998], right after lunch, Betty Nelson and dozens of other residents of Wildwood Health Care Center in Indianapolis were brought into the activity room and told they were being evicted. Rumors about an impending change had circulated at the nursing home for weeks, but the news delivered on this wintry day stunned the elderly patients as they stood at their walkers or sat in their wheelchairs. The facility was ending its relationship with Medicaid, the state-run health subsidy for the poor. Nearly 60 of its 150 residents would have to find new places to live.

"Most had worked all their lives, and many had started out paying their own way at Wildwood, which had charged them \$3,000 or more a month. But eventually they had run through their savings and had turned to Medicaid to help pay their bills."

Mr. Chairman, imagine the shock that these residents felt—many having saved all they could from years of hard work, having depleted all of their savings at Wildwood, only to be told by the nursing home to leave because the home decided not to take Medicaid anymore.

The most egregious case of patient dumping occurred in our own State, Mr. Chairman, when a Tampa-based Vencor nursing home—Rehabilitation and Healthcare Center—attempted to evict 52 Medicaid beneficiaries, purportedly due to the need to remodel the facility. One of those residents was 93 year old Adela Mongiovi.

At that time, it looked like Adela would have to spend her 61st Mother's Day away from the assisted living facility she had called home for the last four years. Nelson and Geri feared that they would have to move Adela when officials at the Rehabilitation and Healthcare Center of Tampa told them that Adela, who suffered from Alzheimer's disease, would have to be relocated so that the nursing home could complete renovations.

As the Mongiovis told me when I met with them and visited Adela last April, the real story far exceeded their worst fears. The supposed temporary relocation was actually a permanent eviction of all 52 residents whose housing and care were paid for by the Medicaid program.

The nursing home chain which owns the Tampa and Wildwood facilities, Vencor, wanted to purge some of its nursing homes of Medicaid residents, ostensibly to take more private insurance payers and Medicare beneficiaries which pay more per resident.

While Medicaid payments to nursing homes certainly need to be revised from time to time, playing Russian Roulette with elderly patients' lives is hardly the way to send that message to Congress. And while I am always willing to engage in discussions about the equity of provider reimbursement rates, I and my colleagues are not willing to allow nursing homes to dump patients indiscriminately.

While the Omnibus Budget Reconciliation Act of 1987 established standards to protect federal beneficiaries from patient abuse, nothing in current law protects Medicaid or "spend-down" residents from being dumped by nursing homes. A resident who has spent her life savings on a three year stay in a nursing home, for instance, is at the mercy of a nursing home which decides to dump that patient based solely on the fact that she becomes eligible for Medicaid.

The legislation that Representatives Davis and Bilirakis have introduced, and I am introducing today with Senator Grassley of Iowa, my good friend and colleague Senator Mack, and others, would rectify this inequity in a narrowly-tailored fashion.

The bill would prohibit nursing homes which have already accepted a Medicaid patient or a private pay patient from evicting or transferring that beneficiary based on her payment status. Nursing homes would still be permitted to decide which residents gain access to their facility; however, they would not be permitted to dump these patients once admitted.

Evictions of nursing home residents have a devastating effect on the health and well-being of some of society's most vulnerable members. A recent University of Southern California study indicated that those who are uprooted from their homes undergo a phenomenon known as "transfer trauma." For these seniors, the consequences are stark. The death rate among such seniors is two to three times higher than that for individuals who receive continuous care.

While the bill is limited in scope, it would protect the 68% of nursing home residents who rely on Medicaid at some point during their stay. Simply put, families must be assured that their parents and grandparents will continue to receive quality nursing home care without fear of inappropriate eviction.

We must remember that people exist behind these statistics. Adela Mongiovi was not just a "beneficiary." She was also a mother and grandmother. To Ms. Mongiovi, the Rehabilitation and Health Care Center of Tampa was not just an "assisted living facility" it was her home.

Mr. Chairman, thank you again for allowing me to testify. I hope to work closely with you, Representative Davis, and the rest of our colleagues to ensure swift passage of this bill, to provide security and peace of mind for all of our nation's seniors and their families.

Mr. BILIRAKIS. Jim, why don't you come forward? We will set the clock at 5 minutes.

STATEMENT OF HON. JIM DAVIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. DAVIS. Thank you, Mr. Chairman.

I also have some newspaper clippings I'd like to submit for the record.

Mr. BILIRAKIS. Without objection.

Mr. DAVIS. Let me thank you again, Mr. Chairman, for being an original co-sponsor of this important bill, and particularly for pushing action on the bill so early in this 106th Congress.

I also want to single out Senator Graham who really was the first of those of us elected here to act on this and bring it to both my attention and your attention.

I think it's fair to say that what the bill represents, as has been discussed already, is a fundamental belief that those people who are forced to put their loved ones in nursing homes are already under enough stress and anxiety and should not have to worry further about the risk that their loved ones will be evicted or transferred from that nursing home simply because they've been forced to rely upon the Medicaid Program to pay their bills.

As I think has been alluded to here, one very important statistic that I have is that half of the people in nursing homes today who rely upon the Medicaid Program entered that nursing home paying out of their own pockets. For those of us who have not had to go through this unfortunate experience of worrying about someone in a nursing home, unfortunately, I think for many of us it's just a matter of time.

As was alluded to earlier, there were 52 Medicaid residents in a facility in Tampa who would have been evicted with just 30 days' notice if Mr. Nelson Mongiovi had not gone to court and succeeded in getting an injunction against the evictions. I'd like to recognize Mr. Mongiovi who is here with his wife Geri in the front row. Mr. Mongiovi will testify later this afternoon.

The explanation provided by the nursing home was that remodeling was the reason for removing these folks. It was later admitted by the nursing home and determined by the Florida Agency for Health Care Administration that the reason these folks were being evicted was simply because of their status as Medicaid beneficiaries.

There is an enormous temptation on the part of these nursing homes to put profits ahead of people. That temptation is only increasing and this bill will put a stop to the temptation that almost resulted in this terrible situation in Florida.

There are over 40 co-sponsors of this bill. Many of the co-sponsors are serving on this subcommittee and I thank you for your

support. There is strong Democratic and Republican support for the bill. The bill is supported by many senior citizen advocacy groups including the National Senior Citizens Law Group, the AARP, and the National Citizens Coalition for Nursing Home Reform, among others.

The nursing home industry through the American Health Care Association is also supporting the bill to so.

This is truly a national issue. The information you've admitted to the record, Mr. Chairman, reflects in Indiana, California and Tennessee there have been similar incidents. What Congressman Bilbray was alluding to earlier was that this law is modeled after a California law that has had some of the same success we can expect on the national level.

In 1987, when Congress set up national standards for nursing home care, one of the things that was not included in that bill was stopping the type of transfer or eviction that will be prohibited by this bill. This bill will, in fact, close a very important loophole.

Mr. Chairman, you and other members of the subcommittee, have elaborated on the specifics of the bill. Under this legislation, nursing homes can continue, if they choose, to leave the Medicaid Program. Although if they choose to do so, they will be forced to provide a clear and conspicuous notice to residents that they will not be protected should they enter that nursing home and later have to resort to Medicaid.

I want to close by thanking Mr. Mongiovi. He fought for his mom who is now deceased. He fought for her fellow residents in the nursing home and now he's fighting for nursing home residents across the country and for those of us who some day will probably have to rely upon a nursing home to care for ourselves and for our loved ones. It's because he stood up, because he fought and because his voice is now being heard here that I'm hopeful we will take action and make this law of the land this year.

Thank you, Mr. Chairman. I look forward to working with you and members of the committee. I yield back the balance of my time.

[The prepared statement of Hon. Jim Davis follows:]

PREPARED STATEMENT OF HON. JIM DAVIS, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF FLORIDA

Thank you, Mr. Chairman. Let me begin by thanking you for being an original cosponsor of this important legislation and for pushing action on this bill so early in the 106th Congress. I would also like to thank Senator Graham for his commitment to this issue and trying to resolve the problem of Medicaid residents being evicted from nursing homes.

I believe you share my belief that nursing home residents and their families should not have to live with fear of eviction based on how they pay their bills. I believe it is unfair and flat out wrong that our most vulnerable and frail citizens, and their families, must worry about being evicted from their nursing homes in favor of people who can pay higher rates.

Our bill provides security for these patients and their families by ensuring that they cannot be evicted from a nursing home in favor of higher paying patients if the nursing home chooses to voluntarily withdraw from the entire Medicaid program. Very simply, Mr. Speaker, our bill will ensure that our nursing homes do not put profits above patients' rights.

In April 1998, a Vencor nursing home in Tampa attempted to evict 52 Medicaid residents under the guise of emptying their facility for remodeling. A judge halted the evictions and Vencor subsequently told the residents they could stay. At this point, I would like to recognize Nelson and Geri Mongiovi. We will hear from the

Mongiovis later in this hearing. However, I want to make sure that the Subcommittee is aware that if it were not for this couple we would not be here today discussing this legislation. Their commitment to helping their loved-one, Nelson's mother, brought this issue to the forefront. Although Adelaida Mongiovi passed away late last year, I know that she is proud of her son and daughter-in-law for continuing to volunteer at her old nursing home every day and for fighting to protect the rights of those nursing home residents. I know that I am proud to be associated with them.

Subsequent to the judge halting the evictions, an investigation by the Florida agency in charge of Medicaid found that the evictions were based solely on the fact that these residents relied on Medicaid to pay their bills.

Senator Graham immediately recognized the severity of this problem and the need to address these mass evictions from a federal level. Shortly thereafter, Senator Graham and I began working to draft legislation to correct this problem. As you will recall Mr. Chairman, I then talked to you about the Tampa incident and asked you to join me in an effort to resolve this problem in a bipartisan manner. I am pleased that today we have 40 cosponsors, both Democrats and Republicans, supporting H.R. 540, the Nursing Home Resident Protection Amendments of 1999.

In addition to the bipartisan support of this legislation, I am pleased Mr. Chairman that our bill is supported by many senior citizen advocacy groups, including the National Senior Citizens Law Center, AARP, and the National Citizens' Coalition for Nursing Home Reform. The nursing home industry, through the American Health Care Association, has recognized the importance of preventing mass evictions of nursing home residents and also supports our legislation.

I believe it is very important that Members of this Subcommittee understand that this is not just a Florida problem. Rather it is a national problem and deserves to be addressed by Congress. After the incident at Rehabilitation and Healthcare Center of Tampa, we learned that this was not an isolated incident. In fact, there are incidents of evictions and improper transfers of Medicaid residents in nursing homes in Indiana, California, Tennessee and other states. As a result of this problem, California passed legislation prohibiting these mass evictions by requiring nursing homes that withdraw from Medicaid to wait until patients die or choose to leave the facility. The State of Tennessee was challenged in federal court (*Linton v. Commissioner*, 4/22/90) and the challengers were successful forcing the State to require that all beds in any nursing home participating in the Medicaid program but certify all beds as Medicaid beds. Mr. Chairman, I have copies of the articles from the *Tampa Tribune*, as well as the *Wall Street Journal* regarding "patient dumping", which I would ask be included as part of the official hearing record.

While the Omnibus Budget Reconciliation Act of 1987 established standards to protect federal beneficiaries from patient abuse, nothing in current law protects Medicaid nursing home residents who rely on Medicaid from eviction. For example, residents who spend their life savings on a lengthy nursing home stay are at the mercy of a facility which could later decide to dump them based solely on the fact that they have become eligible for Medicaid.

Although it is not currently the case, there is a valid concern that nursing homes will start voluntarily leaving the Medicaid program in favor of higher paying private patients. We must address this matter to prevent them from dumping Medicaid patients on the street in favor of higher paying customers. I believe that our carefully crafted legislation is a first step in solving this problem.

H.R. 540 is simple and fair. This bill prohibits nursing homes who have already accepted a Medicaid patient or a private pay patient from evicting or transferring that resident based on his or her payment status. Nursing homes may continue to decide which residents are admitted to their facility and could withdraw entirely from the Medicaid program. However, they would not be permitted to dump these residents once they are admitted.

I assure the Members of the Subcommittee that I do not oppose nursing homes voluntarily leaving the Medicaid system. However, I do believe that residents need some protection once they enter these facilities. Many residents enter a facility as a private pay clients with the expectation that they will be eligible for Medicaid when they have depleted their personal assets in paying for the care they receive. H.R. 540 addresses this problem. Our bill allows a nursing home to voluntarily withdraw from the Medicaid program but requires that all residents who were in the facility at the time of the voluntary withdrawal are protected whether their bills are paid by Medicaid or personal funds. In other words, if a patient enters a nursing home with the expectation that they will be eligible for Medicaid coverage in the future, they will, in fact, be protected should the nursing home withdraw from Medicaid in the midst of their "spend down" of personal assets.

Another protection included in our bill is the advance notification that the nursing home does not participate in the Medicaid program. Under this provision, if a nurs-

ing home no longer participates in Medicaid, it must provide a clear and conspicuous notice to future residents that this nursing home does not participate in the Medicaid program and that it does not accept Medicaid payments. Fortunately, I have not yet had to deal with placing a loved one in a nursing home. However, I can imagine what a trying and stressful time it must be. This provision is intended to relieve some of the stress of the situation. Under our bill, family members would be warned up-front that if they are expecting their loved-one to receive help from Medicaid in the future this is not the facility to place their family members in because, as clearly stated by the facility, they do not and will not accept Medicaid payments for services provided.

Families with loved ones in nursing homes are under enough stress. We must assure families that their parents, grandparents and loved ones will continue to receive quality nursing home care without the fear of inappropriate eviction. H.R. 540 will do that.

Mr. Chairman, thank you again for your commitment to this issue. I look forward to continuing to work with you to shepherd this bill through the legislative process, and I hope that Members of this Subcommittee who are not currently cosponsors of H.R. 540 will join us in our efforts.

I yield back the balance of my time.

Mr. BILIRAKIS. Thank you, Jim.

I have here letters from AARP dated February 10, 1999 to me, from the National Senior Citizens Law Center dated February 4, 1999, from the Department of Elder Affairs, State of Florida, dated February 8, 1999, from the American Health Care Association dated February 3, 1999, and from Vencor Inc. dated February 9, 1999, all in support of the legislation, and I ask unanimous consent that those be made a part of the record.

[The letters follow:]

AARP,
WASHINGTON, DC 20049,
February 10, 1999.

The HONORABLE MICHAEL BILIRAKIS, *Chairman*
Subcommittee on Health and Environment
U.S. House of Representatives
2369 Rayburn House Office Building
Washington, DC 20515

DEAR MR. CHAIRMAN: AARP appreciates your leadership in sponsoring H.R. 540, a bill that protects low-income nursing home residents from discharge when a nursing home withdraws from the Medicaid program.

Across the country, some nursing home operators have been accused of dumping Medicaid residents—among the most defenseless of all health care patients. As with similar complaints about hospitals and physicians, these violations can be serious threats to people's health and safety. Yet, federal and state governments have been limited in their oversight and enforcement capacities. H.R. 540 establishes clear legal authority to prevent inappropriate discharges, even when a nursing home withdraws from the Medicaid program. AARP believes that this is an important and necessary step in protecting access to nursing homes for our nation's most vulnerable citizens.

This legislation offers important protections because of the documented problems that Medicaid patients face, especially people seeking nursing home care. For years, there has been strong evidence demonstrating that people who are eligible for Medicaid have a harder time gaining entry to a nursing home than do private payers. In some parts of the country, there is a shortage of nursing home beds. Under such circumstances, only private-pay patients have real choice among nursing homes. Medicaid patients are often forced to choose a home that they would not have otherwise chosen, despite concerns about its quality of care or location.

Under your proposed legislation, government survey, certification, and enforcement authority would continue, even after the facility withdraws from the Medicaid program, and the facility would be required to continue to comply with it. The bill also protects prospective residents by requiring oral and written notice that the nursing home has withdrawn from the Medicaid program. Thus, the prospective nursing home resident would be given notice that the home would be permitted to transfer or discharge a new resident at such time as the resident is unable to pay for care.

Access to quality nursing homes has been a long-standing and serious concern for AARP. It is an issue that affects, in a real way, our members and their families. The current patchwork system of long-term care forces many Americans to spend down to pay for expensive nursing home care. Therefore, it is unfair to penalize such older, frail nursing home residents who must rely on Medicaid at a critical time in their lives.

Thank you for the opportunity to share our views on this important issue. If we can be of further assistance, please give me a call or have your staff contact Maryanne Kennan of our Federal Affairs staff at (202) 434-3772.

Sincerely,

HORACE B. DEETS.

NATIONAL SENIOR CITIZENS LAW CENTER,
WASHINGTON, DC 20005,
February 4, 1999.

CONGRESSMAN MICHAEL BILIRAKIS
2369 Rayburn House Office Building
Washington, DC 20515

DEAR CONGRESSMAN BILIRAKIS: Last spring, the Vencor Corporation began to implement a policy of withdrawing its nursing facilities from participation in the Medicaid program. The abrupt, involuntary transfer of large numbers of Medicaid residents followed. Although Vencor reversed its policy, in light of Congressional concern, state agency action, and adverse publicity, the situation highlighted an issue in need of an explicit federal legislative solution—the rights of Medicaid residents to remain in their home when their nursing facility voluntarily ceases to participate in the federal payment program.

I have read the draft bill that you will introduce to address this issue. The bill protects residents who were admitted at a time when their facility participated in Medicaid by prohibiting the facility from involuntarily transferring them later when it decides to discontinue its participation. As you know, many people in nursing facilities begin their residency paying privately for their care and choose the facility in part because of promises that they can stay when they exhaust their private funds and become eligible for Medicaid. In essence, your bill requires the facility to honor the promises it made to these residents at the time of their admission. It continues to allow facilities to withdraw from the Medicaid program, but any withdrawal is prospective only. All current residents may remain in their home.

This bill gives peace of mind to older people and their families by affirming that their Medicaid-participating facility cannot abandon them if it later voluntarily chooses to end its participation in Medicaid.

The National Senior Citizens Law Center supports this legislation. We look forward to working with your staff on this legislation and on other bills to protect the rights and interests of nursing facility residents and other older people. In particular, we suggest that you consider legislation addressing a related issue of concern to Medicaid beneficiaries and their families—nursing facilities' discriminatory *admissions* practices.

Many facilities limit the extent of their participation in the Medicaid program by certifying only a small number of beds for Medicaid. As a consequence of their limited participation in the Medicaid program, they discriminate against program beneficiaries by denying them admission. In addition, residents who initially pay privately for their care and later become eligible for Medicaid because of the high cost of nursing facility care are also affected by limited bed, or distinct part, certification. Once such residents become impoverished and need to rely on Medicaid to help pay for their stay in their facility, they are often told that "no Medicaid beds are available" and that they must move. Facilities engage in other practices that discriminate against people who need to rely on Medicaid for their care. We would be happy to work with your staff in developing legislative solutions to these concerns.

Thank you for your work on these important issues.

Sincerely,

TOBY S. EDELMAN.

STATE OF FLORIDA,
DEPARTMENT OF ELDER AFFAIRS,
February 8, 1999.

The HONORABLE MICHAEL BILIRAKIS, M.C.
House of Representatives
Congress of the United States
2369 Rayburn House Office Building
Washington, DC 20515

DEAR CONGRESSMAN BILIRAKIS: I have reviewed your proposed "Nursing Home Resident Protection Amendments of 1999." I applaud and strongly support your efforts to provide additional protection to elders. The evidence is overwhelming that, without extraordinary preparatory efforts that are hardly ever made, any move is harmful for the preponderance of the frail elderly; the technical term is "transfer trauma."

I am forwarding a copy of your proposed legislation to the Director of the Agency for Health Care Administration (AHCA), Ruben King-Shaw for his review. As you know, AHCA regulates nursing homes in Florida.

Again, thank you for your efforts on behalf of elders. If I can be of any assistance, please let me know.

Committed to working together for older Floridians, I am...

Sincerely,

GEME G. HERNANDEZ, D.P.A.

cc: Ruben King-Shaw
Agency for Health Care Administration, w/encls.

AMERICAN HEALTH CARE ASSOCIATION,
WASHINGTON, DC,
February 3, 1999.

The HONORABLE MICHAEL BILIRAKIS
United States House of Representatives
Washington, DC 20515

DEAR MIKE: I am writing to lend the support of the American Health Care Association to H.R. 540 which you introduced with Congressman Jim Davis. This legislation helps to ensure a secure environment for residents of nursing facilities which withdraw from the Medicaid program.

We know firsthand that a nursing facility is one's home, and we strive to make sure residents are healthy and secure in their home. We strongly support the clarifications your bill will provide to both current and future nursing facility residents, and do not believe residents should be discharged because of inadequacies in the Medicaid program.

This bill addresses a troubling symptom of what could be a much larger problem. The desire to end participation in the Medicaid program is a result of the unwillingness of some states to adequately fund the quality of care that residents expect and deserve. Thus, some providers may opt out of the program to maintain a higher level of quality than is possible when relying on inadequate Medicaid rates. Nursing home residents should not be the victims of the inadequacies of their state's Medicaid program.

In 1996, the Congress voted to retain all standards for nursing facilities. We support those standards. In 1997, Congress voted separately to eliminate requirements that states pay for those standards. These two issues are inextricably linked, and must be considered together. We welcome the opportunity to have this debate as Congress moves forward on this issue.

Again, we appreciate the chance to work with you to provide our residents with quality care in a home-like setting that is safe and secure. We also feel that it would be most effective when considered in the context of the relationship between payment and quality and access to care.

Finally, we greatly appreciate the inclusive manner in which this legislation was crafted, and strengthened. When the views of consumers, providers, and regulators are considered together, the result, as with your bill, is intelligent public policy.

We look forward to working with you to further clarify Medicaid policy and preserve our ability to provide the best care and security for our residents.

Sincerely yours,

BRUCE YARWOOD,
Legislative Counsel.

VENCOR, INC.,
LOUISVILLE, KENTUCKY 40202,
February 9, 1999.

The HONORABLE JIM DAVIS
327 Cannon House Office Building
Washington, DC 20515-0911

The HONORABLE BOB GRAHAM
SH-524 Hart Senate Office Building
Washington, DC 20510-0903

DEAR REPRESENTATIVE DAVIS AND SENATOR GRAHAM, This letter is to express my support for the legislation you are sponsoring that prohibits transfers or discharges of nursing home residents as a result of a facility's voluntary withdrawal from participation in the Medicaid program. The proposed bill would protect Medicaid residents' rights during and after a nursing home's voluntary decertification from Medicaid.

The legislation is needed because of differences in individual state laws and regulations and the lack of specificity in federal law. It achieves a proper balance between the rights of nursing home residents who are Medicaid beneficiaries and the nursing home's voluntary participation in the Medicaid program.

Litigation against Vencor constrains me from commenting on specific allegations concerning events that happened at The Rehabilitation and Healthcare Center of Tampa in 1998. For your information, however, all claims between both the Health Care Financing Administration and the Florida Agency for Health Care Administration and Vencor have been settled. All of Vencor's Florida nursing homes continue to participate in the Medicaid program.

I believe that the continued participation of nursing homes in Medicaid is now less certain than it has ever been. The Balanced Budget Act of 1997 changed Medicare nursing home reimbursement to a prospective payment system and reduced Federal funding by 17%. Congress had previously rescinded the Boren Amendment which required states to set Medicaid rates at a level that was adequate to insure quality care. The increase in managed care and these changes in the reimbursement system have been driven by public policy. Their effect, however, has been to threaten the historically higher Medicare reimbursement, which enabled providers to remain financially viable and provide quality care, even while receiving inadequate reimbursement for their Medicaid residents. Bad public policy has been replaced by worse.

There is a crisis in the financing and delivery of long term care. It will only worsen as baby boomers enter their elder years. The solution is not to reduce reimbursement in order to keep Medicaid and Medicare solvent. That approach is now affecting the viability of providers and reducing accessibility for beneficiaries. Exiting the Medicaid program through decertification is a legal but undesirable option now facing long-term providers. This country needs the leadership of its government to help solve this problem.

The legislation you are sponsoring does not address this financing crisis. At best, it may ameliorate one of its potential consequences. I urge you, however, to initiate a search for permanent solutions to this most important problem. I extend to you the willing cooperation of my company and its assistance in that effort.

Sincerely,

EDWARD L. KUNTZ,
Chairman and CEO.

cc: The Honorable Michael Bilirakis

Mr. BILIRAKIS. Jim, I think what we have done working together on a bipartisan basis with senior citizens' organizations and the nursing home industry is an indication of what can be done if people are willing to sit down with an open mind to accomplish something. I'm very grateful to you for your part in all this.

A question was raised earlier during the press conference that we held regarding penalties. I just wondered if you have any opinion. The legislation does not establish new penalties, however, current law provides for them. The nursing home in Tampa, as a matter of fact, was hit with pretty substantial penalties by the State, as well as by the Federal Government. Are those adequate; do you think we ought to take another look at the penalty issue?

Mr. DAVIS. Mr. Chairman, I believe the bill contemplates that HCFA would have the authority to develop a sufficiently substantial penalty of a financial nature. As you pointed out earlier, because the industry is so closely regulated by HCFA already, I'm sure that would be of sufficient concern to these nursing homes that it would deter them from engaging in this type of misconduct in the future.

Mr. BILIRAKIS. Mr. Hash will be testifying right after you, and we can ask him the same question and determine whether he thinks it is adequate.

The Chair would recognize Mr. Pallone for any questions?

Mr. PALLONE. I have none.

Mr. BILIRAKIS. Mr. Whitfield?

Mr. WHITFIELD. No questions.

Mr. BILIRAKIS. Mr. Barrett?

Mr. BARRETT. Just out of curiosity, in the Tampa situation, were there non-Medicaid patients that were also evicted?

Mr. DAVIS. Congressman Barrett, there were not. In fact, when the third floor was opened up to move people, rooms were being set aside for the private-paying patients. However, those patients who were no longer private-pay and were Medicaid beneficiaries were the ones, the only ones, that were being asked to leave.

Mr. BARRETT. Okay. That's the only question I had.

Thank you.

Mr. BILIRAKIS. Mr. Shadegg?

Mr. SHADEGG. No questions.

Mr. BILIRAKIS. Ms. Capps, who is a new member of this subcommittee and the full committee, more than welcome, and we look forward to great things from you.

Ms. CAPPS. Thank you.

Mr. BILIRAKIS. Any questions of Mr. Davis, Ms. Capps?

Ms. CAPPS. Not at the moment.

Thank you.

Mr. BILIRAKIS. By the way, I know Ms. Capps has an opening statement. The opening statement of all members of the subcommittee are made a part of the record without objection.

Mr. Coburn?

Mr. COBURN. No, I have no questions.

Mr. BILIRAKIS. Jim, thanks so much for your contribution to good health for our elders; thanks for being here today.

Mr. DAVIS. Thank you, sir.

Mr. BILIRAKIS. The second panel will consist of Mike Hash. Mike is the Deputy Administrator of the Health Care Financing Administration here in Washington. Mr. Hash also worked with us on the Commerce Committee for many, many years.

Mike, I'm going to set this at 5 minutes, but feel free to exceed that time.

STATEMENT OF HON. MICHAEL HASH, DEPUTY ADMINISTRATOR, HEALTH CARE FINANCING ADMINISTRATION

Mr. HASH. Thank you, Mr. Chairman.

Congressmen Bilirakis, Brown and distinguished members of the subcommittee, I want to thank you for inviting us here today to discuss the need to improve protections for nursing home residents.

We at the Health Care Financing Administration within the Clinton Administration are working aggressively to improve the oversight and quality of nursing home care. Preventing inappropriate evictions of Medicaid residents is an essential part of this effort.

There have been, as you know, Mr. Chairman, intolerable situations in which Medicaid residents were transferred or discharged on false grounds and without appropriate notice. This creates serious disruptions in care, subjects residents to transfer traumas and of course takes an untold toll on the frail beneficiaries and their families that we are sworn to protect.

Just today I learned—and this is not in my prepared statement because it's so new—that we have a report from Florida, actually from Brandon, Florida of a facility which has apparently engaged in exactly the same kinds of practices that were found last year in several facilities.

On the basis of a recommendation of the survey and certification agency in Florida, we have put that institution on a fast track termination if they do not correct the jeopardy that they have created by inappropriately transferring Medicaid patients out of the facility. We will continue to vigorously enforce the existing rules.

I just wanted you to know this is not a problem that has been solved. It is a problem that is continuing right today.

Mr. BILIRAKIS. This was in Bradenton?

Mr. HASH. Yes, sir. It's the Integrated Health Services in Brandon, Florida.

Mr. BILIRAKIS. Oh, Brandon.

Mr. HASH. Brandon, Florida.

Both we and the States have tried to take swift and strong action to make clear that we are very serious about protecting Medicaid residents from inappropriate transfers and discharge, but we need to do much more and we need your legislation to do it.

We are taking steps with the authority that we have now. We have recently issued new policy stating that a nursing facility may, in fact, not decrease the portion of its facilities that are available to Medicaid or Medicare residents but one time during a calendar year. We are considering further regulatory changes in the ability of facilities to change their complement of Medicaid-certified beds.

However, without the legislation that you, Chairman Bilirakis, and Congressman Davis, have introduced, we cannot prevent the evictions of Medicaid patients if nursing homes leave participation in Medicaid. America's nursing home residents need this bill to be enacted into law and you have the strong support of the Clinton Administration and our agency. America's nursing home residents must not live in fear that they will be evicted solely because they rely on Medicaid to pay for their care. Nursing homes must not be allowed to discriminate on the basis of source of payment in terms of continued access to their facilities.

I know that our staff has provided technical assistance to your staff and others in the drafting of this legislation. We look forward to working with you to further ensure passage of this bill and to make sure that we meet the goals of this legislation. We may need, as I noted, to address further protections of Medicaid residents

when nursing homes decrease the number of beds available. We look forward to working with you on this and other issues as well.

My written testimony outlines the progress that we've made in improving the oversight and quality of nursing home care. Our reforms build on the progress that we've made since 1995 when the Clinton Administration issued and began enforcing the toughest nursing home regulations ever. We are doing what we can with the regulatory authority that we now have and we are working to secure passage of some initiatives proposed by the President in his budget to further protect nursing home residents.

There is more we must do. The legislation that you and Congressman Davis are introducing today is another critical piece we need to protect nursing home residents.

We thank you for your hard work on this matter. We look forward to working with you in all of our efforts to protect nursing home residents.

I'd be happy to respond to any questions that you or other members of the subcommittee may have.

[The prepared statement of Hon. Michael Hash follows:]

PREPARED STATEMENT OF HON. MICHAEL HASH, DEPUTY ADMINISTRATOR, HEALTH CARE FINANCING ADMINISTRATION

Chairman Bilirakis, Congressman Brown, distinguished committee members, thank you for inviting us here today to discuss our efforts to improve protections for nursing home residents. The Health Care Financing Administration (HCFA) is aggressively working to improve the oversight and quality of nursing home care. Preventing inappropriate eviction of Medicaid residents is an essential part of this effort.

There have been intolerable situations in which facilities transferred or discharged Medicaid residents on false grounds and without appropriate notice. This creates serious disruptions in care and untold emotional toll on frail beneficiaries we are sworn to protect.

We have taken swift and strong action in these situations, including the imposition of \$10,000 per day of civil money penalties. States have also taken swift and strong action. States and HCFA together have made clear that we are very serious about protecting Medicaid residents from inappropriate transfers and discharges. But we need to do more, and we need legislation to do it.

Chairman Bilirakis, America's nursing home residents need the bill you and Congressman Davis are introducing to be enacted into law. I am proud to say that the Clinton Administration and my agency strongly support your legislation. America's nursing home resident's must not live in fear that they will be evicted solely because they rely on Medicaid to pay for their care. We must enact this bill to prohibit transfers or discharges of Medicaid residents when a nursing home chooses to leave the Medicaid program. I know my staff has provided technical assistance to your staff in drafting the legislation. We look forward to working with you further to ensure passage and to ensure that the goals of this legislation are met. We also may need to address further protection of Medicaid residents when nursing homes decrease the number of beds available to Medicaid residents, and we look forward to working with you on that issue as well.

BACKGROUND

About 1.6 million elderly and disabled Americans receive care in approximately 16,800 nursing homes across the United States. Through the Medicare and Medicaid programs, the federal government provides funding to the States to conduct on-site inspections of nursing homes participating in Medicare and Medicaid and to recommend sanctions against those homes that violate health and safety rules.

Medicaid nursing home participation is voluntary, and current law allows nursing homes to determine and change the extent of their participation. They can designate that only part of their facilities, for example a certain number of beds or certain wings, are available to Medicaid beneficiaries. If a nursing home wants to reduce the portion of its facilities that are available to Medicaid patients, it must give 30 days notice of its intentions to both the State and the affected residents. It also

must ensure that any displaced residents continuously receive all necessary care as they are moved to other appropriate facilities.

USING REGULATORY AUTHORITY

We are taking steps to address problems created when facilities curtail service to Medicaid residents with the authority we have now. We recently issued new policy stating that a nursing home may decrease the portion of its facilities that are available to Medicaid or Medicare residents only once per year. We also are considering whether further regulatory changes would help protect Medicare and Medicaid residents. However, without the legislation Chairman Bilirakis and Rep. Davis are proposing, we do not have authority to prevent evictions of Medicaid patients if nursing homes leave the Medicaid program.

NURSING HOME INITIATIVE PROGRESS

As I said, preventing inappropriate evictions is an essential component of our broad initiative for improving the quality of nursing home care and oversight. These reforms build on progress made since 1995, when we began enforcing the toughest nursing home regulations ever. We have made solid progress since we announced our new initiative last July. We have taken several steps to improve inspections by States, who have the primary responsibility for conducting these on-site inspections and recommending sanctions for care and safety violations. We have:

- issued new guidance to States to strengthen their nursing home inspection systems;
- made clear that States will lose federal funding if they fail to adequately perform surveys and protect residents because we can and will contract with other entities, if necessary, to make sure those functions are performed properly;
- established a new monitoring system to ensure that States identify problems and impose appropriate sanctions;
- formally reminded States that they must enforce sanctions for serious violations and may not lift them until an on-site visit verifies that problems are fixed;
- required States to sanction facilities found guilty more than once for violations that harm residents, with no option to avoid penalties by correcting problems during a grace period;
- required States to conduct more frequent inspections for nursing homes with repeated serious violations while not decreasing their inspections for other facilities;
- required States to stagger surveys and conduct a set amount on weekends, early mornings and evenings, when quality and safety and staffing problems often occur;
- instructed States to look at an entire chain's performance when serious problems are identified in any facility that is part of a chain, and begun developing further guidelines for sanctioning facilities within problem chains;
- begun developing new regulations to let States impose civil money penalties for each serious incident and repeal current rules that link penalties only to the number of days that a facility was out of compliance with regulations;
- begun developing new survey protocols to detect quality problems in nursing homes using a systematic, data-driven process, with initial changes to be implemented this year; and
- secured, with strong support from Congress, a fiscal year 1999 budget with \$171 million for survey and certification activities, including \$4 million earmarked for the new initiative, and requested \$60.1 million for fiscal year 2000 to enable us and other HHS components to fully implement all provisions of the Nursing Home Initiative. This includes \$35 million for HCFA to strengthen State inspection and enforcement efforts, \$15.6 million in mandatory Medicaid money to supplement State inspection and enforcement efforts, and \$9.5 million to ensure adequate resources for timely judicial hearings and court litigation.

We have taken additional steps to help consumers choose facilities, help facilities improve care, and help our law enforcement partners prosecute the most egregious cases. We have:

- created and begun testing a new Internet site, Nursing Home Compare, at www.medicare.gov, which will allow consumers to compare survey results and safety records when choosing a nursing home;
- posted best practice guidelines at www.hcfa.gov/medicaid/siq/siqhmpg.htm on how to care for residents at risk of weight loss and dehydration;
- begun planning national campaigns to educate residents, families, nursing homes and the public at large about the risks of malnutrition and dehydration, nursing

home residents' rights to quality care, and the prevention of resident abuse and neglect;

- begun a study on nursing home staffing that will consider the potential costs and benefits of establishing minimum staffing levels; and
- worked with the Department of Justice to prosecute egregious cases where residents have been harmed, and to improve referral of egregious cases for potential prosecution.

Legislative Proposals

The Clinton Administration's fiscal year 2000 budget includes proposals for:

- requiring nursing homes to conduct criminal background checks of prospective employees;
- establishing a national registry of nursing-home workers who have abused or neglected residents or misappropriated residents' property; and
- allowing more types of nursing-home workers with proper training to help residents eat and drink during busy mealtimes.

The cost of conducting background checks and querying the national registry will be financed through user fees. The Administration will put forward additional proposals as needed for additional legislative authority to further improve nursing home quality and safety.

CONCLUSION

We are making solid progress in our efforts to improve the oversight and quality of nursing home care, but there is more that we must do. We are doing what we can with the regulatory authority we now have. We are working to secure passage of the President's legislative initiatives to further protect nursing home residents.

The legislation that Chairman Bilirakis and Congressman Davis are introducing today to prevent inappropriate Medicaid evictions is another crucial piece that we need to protect nursing home residents. We thank you for your hard work on this matter. We look forward to working with you to secure passage of your bill and the President's proposals. And I am happy to answer your questions.

Mr. BILIRAKIS. Thank you, Mr. Administrator. It's good to know that the Administration is solidly behind our legislation. Certainly it's going to be very helpful in terms of expediting its passage.

I'm amazed that with all the publicity regarding Vencor's Tampa facility, that this is taking place in Brandon. There were penalties applied to Vencor in Tampa.

Mr. HASH. Correct, both by the State and the Federal Government.

Mr. BILIRAKIS. That really brings up the question again that I raised earlier about penalties. Should we take another look at those? Is this something HCFA can do without including it in legislation? Are they onerous enough to at least keep people from indiscriminantly doing something like this?

Mr. HASH. Yes, Mr. Chairman. We are looking at our regulatory reach in this regard. In fact, we have a regulation that's in the final stages that should be promulgated within the next month or so. The regulation would allow us to levy fines, not just for each day that a nursing facility might be out of compliance with our requirements, but for each day and for each instance of a violation. We can actually apply a fine, a civil monetary penalty for each one of those instances under this new reg. We can go up to \$10,000 now per day. We can apply that to per incidence and the multiples could be quite substantial.

We hope to get that out and we think that would be an enhanced tool to protect against these inappropriate actions.

Mr. BILIRAKIS. When something is as inappropriate as this, we certainly are not talking about paperwork mistakes or something of that nature?

Mr. HASH. As you know, Mr. Chairman, these are violations that we would characterize as immediate jeopardy. That is to say they pose an immediate threat to the health and well-being or to the life of residents of nursing homes.

Mr. BILIRAKIS. Thank you.

Mr. Brown, would you like to inquire at this point?

Mr. BROWN. Yes. Thank you, Mr. Chairman.

Mr. Hash, thank you for joining us again. You mentioned in your testimony we may need to address further protection of Medicaid residents when nursing homes reduce or decrease the number of beds available to Medicaid residents. Is there evidence that these reductions in the number of Medicaid beds is occurring more frequently now than 2 years, 5 years or 10 years ago?

Mr. HASH. I'd be happy to try to get you some data to see if we could actually display that. I don't have those figures in front of me, but I think it's well known to us and to others who look at the nursing home situation that often the pattern can be the reduction of the number of beds that they wish to have certified for the Medicaid Program as opposed to completely exiting participation in the Medicaid Program.

We're looking at that scenario and would like to work with you to look at that potential problem as well.

[The following was received for the record:]

Our data systems do not currently provide information on the reduction of beds. We do know, however, that over the last three years the average number of nursing facilities that voluntarily withdrew from the Medicaid program is 58 per year: 59 Medicaid facilities withdrew in FY1996; 54 in FY1997; and 60 in FY1998.

Mr. BROWN. You could not deal with that administratively any more than you could with this problem?

Mr. HASH. No. We don't have the authority in the law now to prevent a nursing home from actually determining itself what complement of its beds it wants to certify for the Medicaid Program.

Mr. BROWN. What precisely should we do? How would you write a formula? What would you do?

Mr. HASH. I don't think we yet have the perfect answer to this because obviously participation ultimately in the Medicaid Program is a voluntary decision on the part of the nursing facility. We certainly don't want to take a step that in any way is likely to make access to needed nursing home care less available.

On the other hand, I think we are concerned about the potential for manipulation of the complement of beds which can result in the relocation of patients just as much as the complete withdrawal from the program. I think we would like to try to explore possibilities for dealing with this problem and working with you and Chairman Bilirakis to see if further attention to this could not be provided in the legislation.

Mr. BROWN. I can't speak for the chairman but I hope that we can address that, not to the point of delaying this legislation but I hope that you and all of us can work that out.

Thank you.

Mr. BILIRAKIS. The chairman's opening statement will be made a part of the record.

We have placed great emphasis on nursing home quality standards in this committee over a period of time. Certainly we empha-

sized that in the last Congress. You can sit back and brainstorm all you want and you're just not going to cover every conceivable problem that might arise.

If there's anything this committee can at least consider that might be helpful to HCFA in terms of maybe you to do your job better, don't hesitate to let us know.

Mr. HASH. Absolutely. We will do that.

Mr. BROWN. I ask unanimous consent that Ms. Capps', Ms. Eshoo's and other statements be admitted by unanimous consent.

Mr. BILIRAKIS. That's already been done a couple of times but by all means.

Ms. Cubin to inquire?

Ms. CUBIN. Thank you, Mr. Chairman.

I'm from Wyoming. There are 480,000 people spread over 100,000 square miles. We have nursing homes with 12 beds, 20 beds. I support the legislation that is in front of us, but when you talk about doing something about reduction in the number of beds when nursing homes have to reduce the number of Medicaid patients in beds, when you have only 12 or 20 patients, you cannot spread out that cost.

I just implore you to take that into consideration. I think my State is the most rural as far as medical care delivery or health care delivery is concerned. I would offer our assistance in any way.

I'm married to a physician and he says he's the only person that lives in the State of Wyoming that doesn't have a Congressman. The reason he doesn't have a Congressman is I will not let him talk to me about HCFA regulation but I'm going to talk to you about it. I would like to get some peace in my life. Usually men say that, but you need to be there.

There are a couple of things that I want to ask you. I'm going to go through them because they'll interrupt me if my time runs out but they'll let you answer, so take notes.

Lots of constituents have gotten in touch with me about this. One regulation we don't understand—I know this is about nursing homes and I agree. One regulation we don't understand is why do we require a 3-day hospital stay before a Medicaid patient can be put in a nursing home? My husband is a primary care physician and I can personally assure you from my relationship with his office that costs us a lot more money than it would ever save us.

Another thing is the drug test bundling where now they are not allowed to order tests or have tests done that are not being used to rule out a particular diagnosis. They can do a blood screen of 15 tests which cost less than 2 single tests. I think we all know that negative results tell the doctor something.

Those were easy because you were shaking your head but here's two I'm not sure. I think these are proposed regs that are coming out now under which a physician has to provide a physical exam for every Medicare patient every year and write down not only what is wrong but what is not wrong? Those examinations can be \$100 if they are actually good examinations and it has to be done whether the patient is healthy, has had any health problems or not, or if the patient hasn't been sick all year. I don't understand the benefit of that.

This is the last one—I know you'll be glad. The physicians believe, whether it's true or not, I don't know, but I know the physicians in Wyoming believe all across the State that due to mistakes in coding, they can face criminal charges and financial penalties as you talked about, \$10,000 a day for each incident.

Wyoming is different. It's like a different country but I want to tell you they're squeaky clean there. We don't have the kind of problems fortunately that have been brought in front of this committee before. I just really wish that rural health care providers could get some special attention because they have a special situation and our folks really deserve special care. I know you agree with that.

Sorry, Mr. Chairman.

Mr. BILIRAKIS. Not at all.

Mr. HASH. Yes, ma'am. I'd be happy to address each of those issues. Also, I'd like to say some of these are issues that we should talk about in more depth and I'd be happy to come at your convenience and discuss these in greater depth.

Let me just say with regard to the 3-day hospital stay requirement, I believe that is a statutory requirement, so it's not something that we have discretion over in terms of the operation of our program.

Mr. BILIRAKIS. Should it continue to be?

Mr. HASH. I'd be willing to take a look at it to see if, in fact, it's causing unnecessary hospitalizations in order to qualify and see what the evidence shows. I don't have a quick answer as to whether we should continue it or not.

Mr. COBURN. Would the gentlelady yield? I'm amazed you don't know the answer to that quite frankly. If we have a statutory requirement that says, and I know that's the law throughout the land, that a Medicaid patient, regardless of their admitting diagnosis, has to stay in the hospital 3 days before they can be transferred back to the nursing home and you all don't know whether that's an effective law or not since you're paying the cost of the hospitalization, one, most often, and two, writing the regulations that surround that, I'm surprised you don't know the answer to that. Have you all not looked at that?

Mr. HASH. We may have looked at it and I may not be aware of it but I would intend that whatever evidence we have, we should share with you and we should take a look at it. I appreciate that.

Mr. BILIRAKIS. The gentlelady's time has expired. Do you want answers now, Barbara, or possibly maybe the two of you can get together?

Ms. CUBIN. Mr. Chairman, if you're not interested in my questions, I'll get together with Mr. Hash.

Mr. BILIRAKIS. Oh, I'm very interested. I hear the same questions from providers in my district, so it's not just Wyoming.

Ms. CUBIN. I know that and I don't want to hold up the committee. I'll have my staff get in touch with your office and work out a time to meet.

Thank you so much.

Mr. HASH. I'd be happy to do that.

Mr. BILIRAKIS. Let's have those in writing for the record. Can we do that?

Mr. HASH. I'd be glad to.

[The following was received for the record:]

The Medicare statute only allows payment for items and services that are medically necessary to diagnose or treat an illness, injury or malformed body part. Consistent with this rule, for clinical laboratory tests, the statute provides coverage only for *diagnostic* tests—that is, tests used to help diagnose or monitor a specific medical condition. Tests used to help *rule out* a particular condition would be covered as diagnostic tests if the patient has symptoms that would reasonably warrant testing for that diagnosis.

However, absent any sign or symptom that would suggest a test is reasonably related to a particular medical condition, it would generally be considered a *screening* (rather than diagnostic) test. The Medicare statute does not allow payment for procedures (including lab tests) that are performed for purely screening purposes (with a few exceptions, such as Pap tests, that are explicitly authorized by the law).

Laboratories often run certain tests (including blood tests) on automated equipment that perform the tests as part of a larger group of tests. The lab may then bill for the entire "bundled" group of tests, including some that Medicare is prohibited from paying for by law. These would include tests that are merely screening tests (performed without any relevant sign or symptom that would warrant the test), and diagnostic tests that are not medically necessary for this patient.

Prior to March 1996, Medicare policy did allow payment for all tests in an automated profile if any one test in the group was medically necessary. This was necessary because older lab equipment would only produce results for certain tests if the test was performed as part of a larger group. However, the testing equipment generally in use today allows specific tests to be performed either with or without the larger group. Thus, Medicare has revised its policy to more consistently reflect its statutory authority. Since March 1996, Medicare pays only for those tests that are medically necessary and are not routine screening tests, regardless of whether they are performed individually or as a group.

We do not require physicians to provide a yearly physical exam to all Medicare patients. In the Medicare+Choice interim final rule that was published in June 1998, we stated that plans must have the information required for effective and continuous patient care and quality review, which includes an assessment of each enrollee's health care needs within 90 days of enrollment. Based on comments we received, we revised this requirement in a February 17, 1999 *Federal Register* regulation to state that a Medicare+Choice organization must make a "best-effort" attempt to conduct an initial assessment within 90 days of enrollment. We have also clarified that Medicare+Choice organizations have the flexibility to choose the form of the assessment, e.g., phone call, questionnaire, home visit, or physical examination.

For honest coding errors, physicians would only have to repay any overpayment results from the error and our contractors would work with the physician to prevent any further honest errors. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) does allow use of the False Claims Act to prosecute fraudulent providers. However, there must be a clear *pattern* or *practice* of submitting claims based on codes they know or should know will result in more payment than is appropriate.

If physicians or their staffs do make billing errors, we do want to find those errors, preferably before we make payment. We are significantly increasing our efforts to screen claims before they are paid, review them afterwards, and audit providers with billing patterns that are out of the ordinary. We are using increasingly sophisticated claims analysis software to search out unusual billing patterns that suggest where we need to take a closer look. Our efforts are not intended to harass physicians. We know that most physicians are honest and conscientious. But we must protect taxpayers who demand that we promote quality care, and have zero tolerance for waste, fraud and abuse.

If we find errors after we make payment, we do want the money returned. However, we are not interested in prosecuting anyone for honest mistakes, and we are not going to refer physicians to the Inspector General for occasional errors. Before making any referrals, we have to believe there is fraudulent intent.

Mr. BILIRAKIS. I think it would be a good idea because they're pertinent. They are not directly related to the subject of today's hearing, but I've already told the gentlelady I don't think anybody would object to her line of questioning.

Mr. BILIRAKIS. Mr. Barrett?

Mr. BARRETT. I have no questions but I want to thank you, Mr. Hash, for all the help you have given us in Wisconsin.

Mr. HASH. Thank you very much.

Mr. BILIRAKIS. Thank you, Mr. Barrett.

Mr. Whitfield?

Mr. WHITFIELD. Thank you, Mr. Chairman.

I'm actually glad that Ms. Cubin raised some of these issues. As a matter of fact, I'd heard a lot of those questions asked of me frequently. I hope the Chair might even consider having a hearing sometime where we can just ask some questions like this because HCFA is such an ominous source of regulations out there and there's all sorts of decisions being made. I think anyone in Congress recognizes when they go home, doctors, administrators, nurses, everyone is asking questions about regulations. I hope that is something maybe the chairman would consider.

Mr. BILIRAKIS. I appreciate the gentleman making that point. I've always felt that quite often we don't have the opportunity to go into depth on issues, so perhaps we could get together informally with HCFA for a roundtable discussion.

Mr. WHITFIELD. I think that would be useful.

Mr. BILIRAKIS. I think many of you know I favor that sort of approach.

Mr. WHITFIELD. On the issue at hand, I notice in the testimony of the administrator of the Florida Nursing and Rehabilitation Center—since I'm not sure how you pronounce the last name, I'm not going to say it—but in her testimony she said under current laws, nursing facilities are prohibited from discharging any resident unless they have secured an alternate living arrangement. Evidently under the facts of Mr. Mongiovi and his family, there was not an alternate living arrangement made at the time they were discharged. Would the nursing home have been in violation of current law?

Mr. HASH. I believe it is and was and it was actually fined as a result of that.

Mr. WHITFIELD. So the fine was for violation of the existing law.

This is more of a generic issue regarding nursing homes, do you have any opinion at all on the repeal of the Boren Amendment which was done a couple of Congresses ago?

Mr. HASH. I think in some respects, the jury is a little bit out on the impact of it. Obviously what the Congress did was to replace the Boren Amendment with a requirement for States to have a public process, to have notice and comment from the public about the establishment of their payment rates for nursing homes, for hospitals, for that matter, and the notion was that having to do this and to actually present the methodology and the justification for the payment rates would provide a forum in which all interested parties could have an opportunity to debate and discuss the appropriateness and adequacy of the rates.

Whether in fact that's proving to be the case or not, I think it's still early in the experience with this to actually make a judgment on it.

Mr. WHITFIELD. You, in your testimony, said that you all were looking at further regulations affecting nursing homes that might change the percentage of beds devoted to Medicaid and you've not

finalized that, but you don't think that you're going to move away from voluntary decisions?

Mr. HASH. No. We would not have the authority to force or cause a facility to come into the program or to stay in if they wanted to exit. It's a voluntary decision on the part of the nursing facility.

Mr. WHITFIELD. In Florida, what is the entity that has the survey and certification authority?

Mr. HASH. I believe it's the Agency for Health Care Financing in the State of Florida. I believe that's the correct name of it.

Mr. WHITFIELD. Mr. Chairman, I have no further questions.

Mr. BILIRAKIS. I thank the gentleman.

Ms. Capps, to inquire?

Ms. CAPPS. Thank you. I appreciate being here. I commend our chairman and this committee for introducing this very important legislation this early in this Congress and support your efforts in doing so.

I appreciate the testimony that's been given today. I realize I'm in the presence of an expert witness and I support the suggestion that we have an informal discussion and briefing on HCFA. I will be in attendance if possible because this is an area that I have many questions regarding and like the others, there are many issues in our Congressional districts on HCFA topics, not all of which relate to this subject.

Just reading the briefing given to us on this whole issue, I'm astounded by the percentage of residents in nursing homes who spend down and become Medicaid eligible in 13 weeks, 63 percent and in 52 weeks, 87 percent. It makes me think about this population and the challenge that nursing homes face in providing good care and meeting their costs and all of these issues.

I'm wondering in which direction this percentage is going. Are there waiting lists? I know when patients are transferred many times they're transferred away from their families and that's a particular issue at stake in some of this.

I'd be happy to defer this but since I have a couple of minutes, maybe you would address some of these that pertain to our topic today?

Mr. HASH. I think if there are waiting lists or shortages of beds for nursing facilities, they are isolated. It's not a systemic problem. There are about 17,000 nursing facilities in the country, so I think there's an adequate complement.

There may be periodic issues about shortages of beds in a particular community, particularly in rural areas which I think is where it is most acute, as it is in most health care facilities. I think in general, our view is we don't have any evidence that access to nursing facilities is a systemic problem.

We would also welcome the opportunity to have an informal discussion and think it would be a useful opportunity to explain and communicate more completely some of the issues that you've heard about and other members of the subcommittee have been confronted with.

Ms. CAPPS. Thank you very much.

Mr. BILIRAKIS. I thank the gentlelady.

Mr. Coburn?

Mr. COBURN. I've got 5 minutes and I'm going to try to sneak all this in.

For everybody here who doesn't know, would you give a quick synopsis of the current requirements on Medicaid transfer out in nursing homes so everybody will know what the standard is?

Mr. HASH. My understanding is a nursing home must give the resident a 30-day notice and must assure they have made arrangements for the transfer to an appropriate facility and that during the pendency of that transfer, all appropriate care and services are provided.

Mr. COBURN. And that sounds real reasonable. I think everyone would agree with that.

Do you have significant knowledge of the actions that happened in Florida happening in many other States?

Mr. HASH. We have incident reports that I personally don't know that I could recite all the details but certainly can furnish them to you.

Mr. COBURN. Let me go back and ask the question. What percentage of the Medicaid beds that are certified in the United States have experienced this kind of problem?

Mr. HASH. I'll be happy to get that answer for you. I don't have that statistic.

[The following was received for the record:]

Our data systems are not currently capable of providing this data. In an informal survey, HCFA staff polled 47 States Ombudsmen in 1997. Fifteen cited transfer and discharge violations as highly problematic.

Mr. COBURN. If, in fact, this becomes law, what new steps does HCFA propose to put in place, new regulations that would have prevented what happened in Florida?

Mr. HASH. I think we already have, as I said in my statement, the strongest nursing home enforcement regulations that have ever been on the record and that we have been taking steps, particularly since last July, to strengthen our enforcement procedures both in terms of our own regional office oversight and more particularly working with the State survey and certification agencies to very significantly change the approach they're taking, the protocol for the surveys, the extent to which they consistently apply penalties.

Mr. COBURN. I understand that, but what new steps, given you have a new law, would you have?

Mr. HASH. If this became the law, then the issue there would be part of the survey or complaint process, either way, could come to our attention that a facility had in fact not provided proper notice that is required in this bill to new residents, that they had not protected adequately the remaining Medicaid-eligible residents who were still there and under this bill would be guaranteed the opportunity to stay there. Part of that guarantee is until the last Medicaid-eligible individual is discharged from that facility, they are under all of the full obligations of the conditions of participation that apply to all nursing home facilities and we would enforce them through the survey process.

Mr. COBURN. But they are under that obligation today?

Mr. HASH. But this would be a new set of obligations with regard to a nursing facility that is withdrawing from participation in the Medicaid Program.

[The following was received for the record:]

H.R. 540 would allow us to protect residents in the case of a facility's voluntary withdrawal from the Medicaid program. Residents would be assured that they can stay in their facility and that the facility would continue to be subject to the Medicaid conditions of participation even though the facility has terminated their Medicaid agreement. HCFA was able to address the situation that happened in Florida prior to H.R. 540. The Vencor situation clearly violated existing law, and we were able to take swift action. The strong enforcement response in this situation sends a clear message to other providers across the nation that this behavior is unacceptable.

Mr. COBURN. Let me ask you another question. How many nursing facilities voluntarily withdrew from the Medicaid system last year?

Mr. HASH. I also do not have that answer for you but I'll be glad to get it for you.

[The following was received for the record:]

Our data indicates that over the last three years the average number of nursing facilities that voluntarily withdrew from the Medicaid program is 58 per year: 59 Medicaid facilities withdrew in FY1996; 54 in FY1997; and 60 in FY1998.

COBURN. I'm extremely concerned, Mr. Chairman. I see here a problem that the law already applies to, that we have demonstrated that we have fined, that we have the ability to control, and we don't have the data to know, one, how big the problem is; two, the number of people who have actually withdrawn. We don't even know, we don't have any testimony to tell us that and we're going to pass a new law without the knowledge of knowing how big the problem is, the severity or the frequency of the problem all because it's a feel-good law.

I'm not against doing the things to protect seniors but I'm extremely concerned at how we're going through this without any knowledge. HCFA's job is to give us that information. Today we have before us the person responsible for that. I know the kind of problems you have at HCFA and I'm extremely sympathetic with the constraints that have been placed on you by both budget and demand but I don't think we should even think about passing a bill until we know the extent of the problem, the number of firms that have actually chosen to voluntarily—there are many that get out but it's because we ran them out, because they didn't comply.

Before we pass a law to pile another set of regulations on nursing homes which is going to limit their ability to have dollars to care for patients and it's going to increase the dollars they're going to put out in terms of compliance with paperwork, we ought to know those things.

I would yield back.

Mr. BILIRAKIS. I don't disagree with the gentleman in terms of wanting to get some of those answers from HCFA. God knows they ought to have those answers and I'm sure they do, it's just that you don't have them readily available.

Of course the hearing is not over and the next panel will share with us a number of instances where this has taken place, so this is not an isolated incidence.

Mr. HASH. Mr. Chairman, I can assure you that we will respond to Mr. Coburn's questions and we will get the data to you for the record.

Mr. BILIRAKIS. Sooner than later because in the interest of getting this on a fast track?

Mr. HASH. Yes, sir. I would just say that I think from our perspective, anytime a vulnerable, frail individual is treated improperly and in violation of the Federal laws and State laws, in many respects, even if it's only one, we should take action against them.

Mr. COBURN. But you have.

Mr. HASH. We don't have the authority that this legislation—

Mr. COBURN. My point is in the instance of the case that's brought before us, the history is you all did take action. They have been fined, they have been penalized. We did do it. The system worked. Correct?

Mr. HASH. Correct, but there are obviously circumstances that this bill addresses where nursing home patients could be subjected to transfers that they do not want, are not in their best interests.

Mr. COBURN. Absolutely, and don't get me wrong, I'm not against that. I'm just saying every time we lay a dollar, compliance dollar on a caregiver today, it's not coming out of the caregiver's pocket, it's coming out of the patient's provision. We need to remember that. Greed conquers all technologic difficulty. The one that's going to benefit in that is going to be the person that's in control of the money. So if we spend a dollar on compliance, that's a dollar that's not going to that patient.

Mr. BILIRAKIS. Mr. Hash, in earlier comments, I believe you alluded to the fact you didn't want to do anything that was going to make even less availability of nursing homes available to the elderly, so you take all that into consideration.

Mr. HASH. That's correct.

Mr. BILIRAKIS. In the case at hand, the family had to go to court in order to get an injunction to keep them from evicting those individuals.

The gentlelady from California has been very patient this afternoon. Ms. Eshoo?

Ms. ESHOO. Thank you, Mr. Chairman. My gratitude to you and to my wonderful colleague, Jim Davis, who is here today. I'm sorry I missed your testimony introducing this bill.

This is directed to my colleague, Mr. Coburn. I always thought that hearings were exactly for bringing up the questions, to answer the very questions we're posing. I don't remember a hearing that I've been in where every single question that was posed of the witnesses, that they had the complete answer with them, but they do submit things to us. Many times they follow up, as Congresswoman Cubin suggested, that they come to her office. So that's what this hearing is about today and I appreciate what you've put forward, Mr. Hash.

I don't know whether the rest of my colleagues on this important subcommittee have read the most recent HHS news press release but it's something we have dealt with in this subcommittee. We very often don't focus on good news.

That is, the Inspector General issued a report relative to an issue that we've dealt with, fraud, abuse and waste in the system. Obvi-

ously, we still have a ways to go to eliminate what I just mentioned in terms of improper Medicare payments, but there's been a 45-percent reduction in improper payments in just 2 years. So I salute the agency and everyone that is a part of doing that because I was one of the people originally that really climbed on some of the statistics that we had. So I salute you and thank you. I'm not here to scold you today.

About the legislation, the legislation prohibits discharging a patient because he or she is on Medicaid. Can you outline or give us any idea what we're doing today that would prevent discriminatory admissions practices and if you know or have anything you can share with us about whether that even takes place?

Mr. HASH. Yes, there have been cases of inappropriate discrimination in the admission of patients to nursing facilities based on source of payment. When those allegations are made to us or evidence comes to us, we and the States go out to validate that and if there is a validated complaint of that kind, we can take action against the facility.

Ms. ESHOO. But do you think there is a nexus between it happening at the front end, and if we prevent more of that, then it wouldn't happen at the other end?

Mr. HASH. I think there is potentially a connection here. There is no question about that. Obviously this legislation is not designed to address the front end piece.

Ms. ESHOO. That's what prompted me to ask the question.

Mr. HASH. From what I know, there have been cases that we have pursued where there has been discrimination based on a source of payment. The admissions policy cannot discriminate in a Medicaid-certified facility on the basis of source of payment.

[The following was received for the record:]

With regard to discriminatory admission practices as they relate to Medicaid, the situation is actually a bit more complex than my earlier statements at the hearing indicate. I was incorrect to say that we investigate allegations of discrimination on the basis of source of payment for admissions to Medicaid certified facilities. We do have some significant Federal protections for current and prospective Medicare and Medicaid beneficiaries in nursing home admissions and continued stays. However, there is no simple, absolute Federal prohibition on discriminating against Medicaid beneficiaries in nursing home admissions. Indeed, a facility may admit a private pay person in preference to a current Medicaid beneficiary. The protections in our regulations prohibit a nursing home from:

- requiring residents or potential residents to waive their rights to Medicare or Medicaid;
- requiring oral or written assurances that residents or potential residents are not eligible for, or will not apply for, Medicare or Medicaid benefits;
- requiring a third party guarantee of payment to the facility as a condition of admission, expedited admission, or continued stay (although an individual who has legal access to a resident's income or resources available to pay for facility care may be required to sign a contract to do so, without incurring personal financial liability);
- charging, soliciting, accepting, or receiving any gift, money, donation, or other consideration, in addition to any amount otherwise required to be paid under the Medicaid State plan, as a precondition of admission, expedited admission, or continued stay by a Medicaid beneficiary (except that the nursing home may charge a Medicaid resident for items and services that resident requested and received that are not covered by Medicaid nursing home payments, so long as the facility gave proper notice of the availability and cost of the services and does not condition admission or continued stay on requesting and receiving the additional services; and the nursing home may solicit, accept and receive a charitable, religious, or philanthropic contribution from an organization or per-

son unrelated to a Medicaid-eligible resident or potential resident to the extent that the contribution is not related to admission, expedited, admission, or continued stay of a Medicaid eligible resident).

Moreover, States or political subdivisions may apply stricter standards, under State or local laws, to prohibit discrimination against individuals entitled to Medicaid.

Ms. ESHOO. How many nursing homes are there in the country?

Mr. HASH. There are about 16,800.

Ms. ESHOO. Of that, how many participate in Medicaid?

Mr. HASH. I think virtually all of them are Medicaid-certified.

Ms. ESHOO. Do you think the issue with which the bill deals can be characterized as widespread or somewhat contained? The reason I ask that question is that anytime we read a story about something that's related to a nursing home and it's negative, we always think, there but for the grace of God, go I. None of us want to go to one. We want to be taken care of at home.

I think we also know, and I've been around these issues even before I came to the House, that there are some bad characters, there are some really bad players in any given industry. That's why I asked the question, because I think what we do needs to be a signal to the bad apples.

God knows we need all the good operators in this country. The population continues to age and we're trying to deal with social security and what we do to address the baby boomers. God knows we need more and more good operators and safe places for the care of people in this country.

Maybe you can tell us something about that statistic, the number of bad players? If we have to introduce one solid bill, which I think this is a pretty good bill, to go after the bad players, do you think professionally this will cure what we're trying to affect?

Mr. HASH. I do believe this legislation will provide protection in those instances where a facility has Medicaid patients and decides for whatever reason that in the future they don't want to participate. There is protection in this bill that is very important to that circumstance.

With respect to how widespread the problem is, I think Mr. Coburn makes a good point that we need to take a look at what the evidence shows. I think most of us are aware that what brought this to light very vividly last year was one particular nursing home chain seemed to be taking actions like this in a number of different places—in Indiana, in Florida, et cetera—so that at least there is a recent spate of this.

I think it would be unfair to say this is a systemic problem across all nursing facilities because I don't believe that it is but I do think this is an important protection in the instances where homes decided that they, for whatever reason, don't want to continue to participate in Medicaid. Those people who are there and who came there relying on a commitment that this facility would continue to keep them and serve them, that those people will be protected by this legislation.

Ms. ESHOO. Thank you, Mr. Chairman, for the time and for caring about this issue and to you and Mr. Davis for introducing the legislation. I think it's a great service to the people in this country and we should move on it.

Mr. BILIRAKIS. I thank the gentlelady.

The instance that you referred to which has just come to your attention in Brandon, was that the same nursing home chain or a different one?

Mr. HASH. No.

Mr. BILIRAKIS. So it was a different nursing home chain?

Mr. HASH. A different nursing home chain. It's the Integrated Health Services.

Mr. BILIRAKIS. Anything further?

Mr. COBURN. Mr. Chairman, I just want to make a unanimous consent request that we do have our questions returned in writing and specifically the number of cases that occurred like this that HCFA is aware of, the number of nursing homes that withdrew from Medicaid last year voluntarily, and also, as that relates to the percentage.

Mr. HASH. Of total facilities?

Mr. COBURN. We really need to know how big of a problem this is. I believe this happened; I don't doubt that; and it's horrendous that they would try to do this. The point is, how big is it and are we going to hit an ant with an atomic bomb and is it something we need to do given the cost of compliance today? I just want to make sure we get our answers.

Mr. BILIRAKIS. Of course there may be additional questions, and you're willing to respond to all those in writing within a very reasonable period of time?

Mr. HASH. Yes, sir, Mr. Chairman.

Mr. BILIRAKIS. Thank you very much for taking the time to come.

Mr. HASH. Thank you, Mr. Chairman.

Mr. BILIRAKIS. The next panel will consist of: Mr. Nelson Mongiovi of Tampa, Florida; Ms. Nona Wegner, Senior Vice President of The Seniors Coalition located here in Fairfax, Virginia; Mr. James L. Martin, President of the 60 Plus organization located in Arlington, Virginia; Ms. Robyn Grant of Severns & Bennett of Indianapolis, Indiana; and Ms. Kelley Schild, Administrator of the Floridian Nursing and Rehabilitation Center located in Miami, Florida.

Ladies and gentlemen, your written statement is a part of the record. I'm going to put the clock on 5 minutes. I would hope that you would stay as close to that as you can. You're welcome to read your statement but by complementing it orally, you might be able to get across more information.

Having said all that, Mr. Mongiovi, why don't we start with you, sir?

STATEMENT OF NELSON MONGIOVI, TAMPA, FLORIDA

Mr. MONGIOVI. Distinguished panel, committee members, I'm proud to be here today and thank you for inviting me.

My name is Nelson Mongiovi.

Last April, 10 months ago, my mother was one of 53 nursing home residents that Vencor tried to evict from their facility in Tampa, Florida. Evictions of Medicaid residents occurred in 13 homes in 9 separate States with a corporate plan underway to withdraw an additional homes from the Medicaid Program. After 10 residents had already been evicted from the facility in Tampa,

an immediate injunction was served to stop all further evictions in order to prevent irreparable damage to the residents.

There are 1.6 million nursing home residents in our Nation at risk of eviction unless legislation to prevent this is approved. Senator Bob Graham, Congressman Jim Davis, and Congressman Michael Bilirakis joined us in our fight to ensure that this dumping would never occur again.

A \$5 million renovation had taken place from the end of 1996 and was completed at the end of 1997. During this period, residents were accommodated on all other floors in the facility. After renovations were completed, all residents had returned to their original setting and began another period of readjustment.

It was a necessity to visit this facility on a daily basis to ensure that my mother was clean, fed, turned and taken care of on a daily basis. When my wife went to the facility on March 30, 1998, she heard from another caregiver that the facility was going to undergo yet another renovation and everyone on the fourth floor would be moved. This caregiver was offered a room on the third floor for her daughter, a private-pay resident, and she was going to be moved the next morning.

My wife immediately went to the third floor and discovered 46 empty beds were available, including the room directly beneath my mother's room. She immediately went to the administrator's office to see if this move was just a rumor and was told the fourth residents would be moved out of this facility. My wife asked if my mother could be moved to the available third floor room because the floor plan was identical to her room and we did not want to traumatize her again.

The administrator said a team from corporate had been sent to handle these moves. We met with the team member the next day and she informed us my mother would definitely be moved out of this facility. We realized the private-pay residents had been moved to the third floor and only Medicaid residents were being evicted.

Residents and their families were in a panic when the official notice was received stating the safety of individuals in the facility is endangered by the residents being here. The injunction forced the return of the ten residents who had been moved and prevented further evictions. When someone is moved into a nursing facility, it becomes their home; it's not just a building to warehouse people until they die. Medicaid dumping must not be allowed in our Nation. Our loved ones need a place to live their final years with dignity if they need total care. Medicaid residents must be protected and not subjected to physical and emotional harm, irreparable damage and even death if evictions are allowed to continue.

Out of the 53 original Medicaid residents, only 33 remain today; 16 have died. My mother died in November 1998 but we continue this effort because nursing home residents and their families must be protected and must never have to endure the suffering we have gone through. I am here on behalf of every nursing home resident in our Nation and we respectfully request your unanimous support in making this bill a law.

Thank you very much.

[The prepared statement of Nelson Mongiovi follows:]

PREPARED STATEMENT OF NELSON MONGIOVI

Rehabilitation and Healthcare Center of Tampa

Chronology of Events

RE: Resident—Adelaida Mongiovi

Date of Birth—3-16-05

AGE: 93

November 7, 1996—Letter mailed to all residents of the Rehabilitation and Healthcare Center of Tampa indicating that the Facility would undergo "major renovation beginning 12-2-96," "Construction is scheduled to last approximately one (1) year," and "We will be asking residents to relocate to other rooms." In addition, they said in this letter that we would have a "new and beautiful home to return to."

February 1, 1997—Letter mailed to all residents of the Rehabilitation and Healthcare Center of Tampa thanking everyone for their patience during the ongoing renovation. (Note: The major renovation was completed at the end of 1997.)

March 30, 1998—Letter mailed to all residents on the 4th floor of the rehabilitation and Healthcare Center of Tampa indicating that they would be remodeling the 4th floor and the short hall of 3rd floor and stating, "We need to discuss placement options outside of this facility," additionally stating, "but we will assist you in finding alternate placement."

March 30, 1998—Statement in Notice of Transfer or discharge "The safety of individuals in the facility is endangered by the resident's being here."

Monday—March 30, 1998—5:30 p.m.

1. I (Geri Mongiovi) went to the nursing home, Rehabilitation and Healthcare Center of Tampa to check on my mother-in-law, Adelaida Mongiovi (Room 416). When I was leaving, I was asked by another resident's mother if my mother-in-law was also being moved to 3rd floor. She said that she had been contacted by the Facility and told that her daughter's move was going to take place the next day. I questioned her about the reason she had been given for this move. She was told that it was for upgrading the wall paper and carpet installation. Also, because her daughter was a "Private Pay" resident, she would be moved to the 3rd floor. She was told that all of the 4th floor residents would be moved.

This caregiver was extremely upset and could not understand why the move was occurring, since family members had just returned to the 4th floor after the extensive Five Million Dollar (\$5,000,000) remodeling job. She indicated she had just finished redecorating her daughter's room and that her daughter was finally relieved to be back in her own room. She told me that she did not want her daughter to be moved to another room in this Facility again. During the extensive remodeling, which encompassed approximately one year, the residents had been accommodated on other floors in the Facility.

2. I immediately went to the 3rd floor to determine how many rooms were vacant. I was in a panic about having to displace my mother-in-law again. I discovered that the room directly under my mother-in-law's room was vacant (Room 316). I was slightly relieved and hoped that she could be moved to that room. All of the 4th floor residents were going to be required to leave the floor. Since there were empty beds on the 3rd floor, I felt that if I spoke up immediately, before any of the moves took place, I would have an opportunity to move my mother-in-law to that floor.

I was extremely upset about what was occurring and fearful of what my husband's reaction would be if his mother were moved again. The uncertainty of where we would place her if it became necessary to move her to another nursing home led me to panic. If this occurred, it would be impossible for me to visit her daily, as I have done for almost four years.

3. As I left the Facility, I saw the Administrator, Marie Panapolis, and asked her if I could speak with her about the remodeling and the possibility of having to move the residents again. I wanted to determine if this was just a rumor or if this was really going to take place. We sat in her office and she confirmed that this re-renovation was going to take place and that the 4th floor residents would have to be moved. Ms. Panapolis would be leaving her position as Administrator of this facility on April 17, 1998. I then asked Ms. Panapolis if my mother-in-law could be moved to Room 316 as this room was vacant and because it was located directly under the room which she now occupied. The room on the 3rd floor (Room 316) was exactly like my mother-in-law's room. If she would be able to occupy this room, she would not be as traumatized by another move. I reminded her that I came to the Facility every day to see my mother-in-law, that my husband was able to walk to this Facility since no automobile was available for him when I worked, we live five blocks away, and that I work just a few blocks away. Ms. Panapolis said she was not involved in the relocation decisions and that Vencor had sent a Team down to assist

with this matter. When I asked her who in the Vencor Team was making these decisions, she told me "Amanda Clark is making the decisions about who will be moved to 3rd floor." I then asked if Amanda Clark was in the Facility and if I could meet with her regarding moving my mother-in-law to the 3rd floor. She knocked on the door across from her office and returned to tell me that Amanda Clark was in a meeting at the time. I asked her if she would relay my concern about not being able to visit the Facility daily and the fear that my mother-in-law would not survive yet another relocation. Additionally, I asked her if she could inform me immediately the following day whether or not we could move my mother-in-law to Room 316.

Upon arriving home this evening and telling my husband about the series of events that had taken place, he became extremely upset. I tried to calm his fears, telling him that Ms. Panapolis had assured me she was going to talk with Amanda Clark when the meeting was over and she would give me an answer tomorrow regarding the possibility of moving his mother to 3rd floor. I was also well aware that, along with Room 316, there were other openings on the 3rd floor.

Tuesday—March 31

1. While at work, I began to get an uncomfortable feeling that more was going on at this Facility than I was aware of. The fact that a "Vencor Team has been sent down to assist us" and the statement that, "Corporate will be making these decisions" really began to worry me. Instead of going directly to the Facility from work as I sometimes do, I called Nelson and told him to be ready so I could pick him up and we could go to the nursing home together.

2. When Nelson and I arrived at the Facility, we immediately went to the 3rd floor and, much to our surprise, noticed that the three "Private Pay" Residents who had been on the 4th floor yesterday had been relocated to the 3rd floor on this date (one moved to Room 316 and two moved to Room 323). The fourth "Private Pay" Resident that had been offered the opportunity to relocate to the 3rd floor had decided that she was going to leave this Facility. Nelson and I walked up and down the hall trying to determine which rooms still had beds available. Three residents remained in rooms in the short hall, on the 3rd floor.

3. Nelson and I asked if Amanda Clark was available to speak to us. She made herself available and we asked if Ms. Panapolis had relayed our concerns to her. She indicated that she had spoken with her. We told Ms. Clark that we wanted to know if we would be able to move Adelaida Mongiovi to the 3rd floor, because we had seen available beds. She stated that this would not be possible and said that Mrs. Mongiovi "would be required to move out of the Facility." She mentioned that she would be happy to assist us in finding another facility. We asked her "who in Vencor can we speak with regarding the decisions that are being made" and she replied, "Corporate is making the decisions." We then inquired about whom we could contact at the Corporate level regarding the decisions which were being made. We also asked her "If there are still remaining beds on the 3rd floor, why would we not be able to move Adelaida Mongiovi?" She reiterated, "Corporate is making the decisions." We were also told that the beds which remained on the 3rd floor were going to be held for "Insurance Patients and hospitals which had contracts with Vencor."

At this point, it became evident to us that the "Private Pay" Residents were being moved to the 3rd floor while the "Medicaid" Residents were being farmed out to other facilities. Becoming extremely angry as we realized what was happening and trying to get some clear answers, we asked Amanda Clark if she could give us the names of Corporate personnel that would be able to answer our questions. She said that she had no available names, but would attempt to get answers for us.

The following questions were posed to Amanda Clark:

1. Why had only the "Private Pay" Residents from the 4th floor been offered the opportunity to move to the 3rd floor?
2. Why were only the "Medicaid" residents on the 4th floor going to be relocated to other facilities?
3. Was there any possibility that we would be able to move Adelaida Mongiovi to the 3rd floor until this re-renovation was completed?
4. If we did have to move out of this Facility, would the Resident be able to return when the re-renovation was completed?
5. What type of re-remodeling would they be conducting in the facility after a five million dollar (\$5,000,000) renovation had just been completed and the residents had recently been returned to the 4th floor?
6. Is this facility going to go private and, if so, was this the reason they were re-wallpapering the newly wallpapered walls with "upgraded wallpaper?"
7. We asked if she could advise us as to how to contact the President of Vencor or the Corporate personnel making these decisions so we would be able to call

someone directly to discuss our concerns? TO EACH AND EVERY ONE OF OUR QUESTIONS, AMANDA CLARK'S ANSWER WAS, "I DON'T KNOW, CORPORATE IS MAKING THE DECISIONS," HOWEVER, I WILL TRY TO GET SOME ANSWERS FOR YOU. Amanda Clark informed us that Vencor was based in Louisville, Kentucky, and she said she had no telephone numbers available for us to contact the Corporate personnel making these decisions. She did report that she would relay our concerns to them and attempt to get answers to our questions. She indicated that we would not be able to contact Vencor Corporate Personnel directly regarding these concerns, but again reiterated that "The Team is here to help you in any way we can." She also told us that she would be happy to assist us in "finding a new home." We left at that time, extremely angry and frustrated, indicating to her that we would see her on the following day. Ms. Clark informed us that we would be receiving a letter "very shortly." This letter had also been mailed to all 4th floor Residents who were on Medicaid.

Wednesday—April 1

After arriving at work, I began feeling more and more uncomfortable about what Nelson and I felt was occurring. Our fear was that if we did not take immediate action, there would be no nursing home availability in Tampa because we were one of fifty-three Residents who were being discarded and knew the panic that would arise after these letters were mailed.

After a short time at work, I asked if I could take the rest of the day off because I had some critical issues to attend to immediately. Nelson and I were well aware of the quality of nursing homes in this area, the lack of availability for new residents and the inconvenience of so many locations with some being a great distance from our home. We had, upon my mother-in-law's initial entry into the nursing home, visited almost every existing facility in Tampa. At this time, we knew we had to relocate, but experienced a feeling of impending doom regarding the possibility of ever being able to return. I left work and Nelson and I went immediately to the nursing home closest to this Facility, Tampa Health Care Center, 2916 Habana Way, Tampa, Florida. We spoke with a woman in admissions and told her about our situation. She said that Rehabilitation and Healthcare Center of Tampa had already contacted her and had sent her "Face Sheets" on some residents they would like to move. We discussed my mother-in-law's situation with her and, at that time, she indicated to us that there was only one available bed for a female resident. We asked if she could obtain the Face Sheet on my mother-in-law and determine if she could take this bed. We had decided at this point that since we had to make a move, this was the closest nursing home and we would just have to adjust until my mother-in-law was possibly given the opportunity to return to the Rehabilitation and Healthcare Center of Tampa.

From that nursing home, we went to The Home Association, 1203 22nd Avenue, Tampa, Florida, to see if they had any available beds. Again, we were told they needed to evaluate her to see if they would be able to accept her. They said this would be done on Friday.

We then went to the Rehabilitation and Healthcare Center of Tampa to see if Ms. Clark had gotten any answers for us. She said she did not know what criteria had been used for moving patients and still did not know whether or not we would be able to return. Nelson and I again went to the 3rd floor to see if the remaining available beds had been filled and were astonished to see that openings still remained.

Thursday—April 2

In the morning, Nelson visited as many nursing homes as possible while I was at work. The same story was repeated over and over, we have no beds available at this time.

In the meantime, many of the other families had received their letters and panic had set in. As we have become friends with so many families on this floor, as so many families are unable to communicate in English along with so many being unable to understand what was occurring, in general, we all banded together in an effort to get some answers. Many had called all of the numbers listed on the discharge letter, attempting to get some answers about what was happening. They questioned whether Vencor could really remove all the 4th floor "Medicaid" Residents, did we have any rights, and whether anything could be done about the situation. We had so many family members contacting us that we decided at that time that we would try to get some more answers.

The Home Association made a visit to the Facility to evaluate my mother-in-law and decided that they would accept her in their nursing home. Within one hour

after the evaluator left Rehabilitation and Healthcare Center, the Home Association was contacted by Amanda Clark to see if my mother-in-law could be transferred immediately. The Home Association told them that the room had not even been cleaned and that she understood we had thirty days to accomplish this discharge. The Home Association called me immediately to tell me what had happened and asked what the big rush was.

At 5:00 p.m., Nelson picked me up from work and we again went to see Marie Panapolis. As soon as Amanda Clark saw us in her office, she approached us saying "I see you already found a place" and wanted to know when the arrangements for transfer would be made. Nelson told her that he would let her know.

By now, we had received our letter. This letter stated "The safety of individuals in the facility is endangered by the resident's being here." We stated this was definitely not true and were told by Marie Panapolis that Alice Adler, Agency for Healthcare Administration had decided on the wording that was to be used in the Notice of Transfer or Discharge and that this discharge of patients had been approved by the state.

We then asked her if any decision had been made about whether or not the 4th floor Residents that would be moved from this Facility would be able to return when the re-modeling was completed. She told us at that time that Vencor had now said, when this remodeling was completed, depending upon availability of beds in the Facility and by priority, the displaced residents might be allowed to return. We asked her what priority method would be used to allow returns and she said they were trying to determine whether it would be the age of resident versus the years the resident had resided in the Facility before displacement, but that this determination had not yet been made. This verbal decision was made after numerous calls had been made to all of the telephone numbers on the Notice of Transfer or Discharge form. When we left the Facility, Nelson and I continued to visit as many other nursing homes as we could visit in one day. Upon returning home that evening, we agreed that a verbal statement from Vencor saying that we might be able to return if there were available beds was as useless as the paper it was written on. We wanted it in writing.

Friday—April 3

Nelson and I went to the Facility approximately 9:00 a.m. and met with Marie Panapolis. I had scribbled down some ideas for a possible letter to be written by Vencor to the residents if, in fact, they were really going to allow us to return. We also told her that verbal promises meant nothing to us and we needed this in writing. She read my rough draft and said she would be meeting with Vencor personnel and would try to have an answer for me by the next Friday, April 10, 1998, as to whether or not they would put this in writing.

The Agency for Healthcare Administration, the State Long Term Care Ombudsman, the DD Advocacy Center for Persons with Disabilities, Inc., and the MI Advocacy Center for Persons with Disabilities, Inc., had all been called by the 4th floor Residents and/or their family members, with additional calls having been made to Bay Area Legal Services and different attorneys. The universal answer given by all resources were: IF THE STATE APPROVED IT, THEN THERE IS NOTHING THAT CAN BE DONE ABOUT IT, OR WE WILL CHECK INTO THE MATTER FOR YOU. Nelson and I then decided that we really needed to leave no stone unturned to determine what our rights were. We then remembered an article, "Nursing Homes often violate law" which we had read a while back describing "Medicaid Dumping." This article depicted the many different tactics by which this is accomplished. We wondered whether this was what was happening to all of the 4th floor "Medicaid" residents so we decided at this time to go to the newspapers and television stations hoping that we might expose their actions.

Saturday, April 4, 1998/Sunday, April 5, 1998/Monday, April 6, 1998

Nelson and I visited sixteen nursing homes in the area, from 8:00 a.m. to 10:30 p.m. during the course of these three days.

Tuesday—April 7, 1998

The Tampa Tribune printed the story of the plight of the 4th floor "Medicaid" Residents who were being evicted from their home and, coincidentally, the Wall Street Journal printed a story on this same date regarding "Vencor" and "Medicaid Dumping".

Nelson went to the Facility and saw many residents being moved out so rapidly that no one knew what was going on. The Residents were crying hysterically, not knowing what was happening or where they were going. Within two days, ten residents had been evicted from this Facility. The Residents' family members were also devastated, wondering how they would be able to see their loved ones if moved to

other facilities. Many of these family members depended on rides every day as they did not drive, some walked to see their loved ones and still others were only able to navigate the familiar streets without having to drive on major thoroughfares. There was utter chaos at the Facility at this time with everyone, residents and family members, trying to determine what, if anything, would we be able to do.

Realizing that our loved one, along with our fellow residents, would be subjected to physical and emotional harm, irreparable damage, and even the possibility of death if these moves would continue to take place, Nelson immediately contacted the Law Firm of Wilkes and McHugh. Bennie Lazzara, Esquire, from this Law Firm, accompanied Nelson to the Courthouse to file a Petition for Temporary Injunction which was granted immediately. This prevented any additional removals of residents from this Facility pending resolution of this matter by the Court.

Mr. BILIRAKIS. Thank you very much, sir.

Ms. Wegner?

**STATEMENT OF NONA BEAR WEGNER, SENIOR VICE
PRESIDENT, THE SENIORS COALITION**

Ms. WEGNER. Thank you, very much.

I'm Nona Bear Wegner, Senior Vice President of The Seniors Coalition, a non-partisan, nonprofit advocacy organization representing approximately 3 million older Americans and their families. It is a pleasure for us to have the opportunity to testify today in support of the Nursing Home Resident Protection Amendments of 1999, which Mr. Bilirakis and Mr. Davis have put together. We thank them for their leadership on this issue and for the work the subcommittee does to protect the health of older Americans.

The nursing home industry provides an invaluable service to the most frail and vulnerable in our society, as well as being an enormous relief to family members who trust nursing home operators to care for their families in their absence. It's essential that we have conditions which allow private enterprise to operate nursing homes and to encourage investors to invest in nursing homes so that these facilities will continue to grow and develop in proportion to the aging of our society.

At the same time, we must offer protections to families from being suddenly and unfairly denied access to care. Finding the right balance between protecting the rights of operators and investors and protecting the rights of patients and their families is a very difficult process and the fact there is a strong bipartisan support for this bill, and the fact there are consumer and operator groups in support today is a testament to the painstaking manner in which this bill has been crafted.

There are three points I'd like to make about H.R. 540. First and foremost, the most basic premise of our free market society rests on the fact that consumers must have accurate information. The aspect of full disclosure in this bill is critical in order for marketplace forces to work.

Second, it is a fact of life that Medicaid currently pays—estimates say as much as 70, others say as much as 40 percent—of all care. We in no way condone the outrageous activities that led to Mr. Mongiovi and other families undergoing the things they experienced and therefore, the writing of this bill, but we must face the simple fact that when any operator is asked to provide care for half or more of their population at a reimbursement rate which does not allow them to meet their costs, they are going to look for an alternative. That is the real crux of this issue.

Third, as I have said, and most importantly, nursing home residents and their families cannot be faced with being turned away without notice and without alternatives. That is intolerable.

Clearly then, the kinds of practices and safeguards outlined in this bill must be enacted in law. It recognizes the realities of the industry while at the same time building on the safeguards that are needed.

There is one more point I really feel I have to make. Far too many Americans are not prepared to face the cost of long-term care. Neither the Medicaid budgets of all 50 States or the entire Federal Treasury are going to be able to absorb the impact of that cost. Industry projections say that in 30 years, the number of nursing home patients will double, but the total outlay for nursing home costs will quadruple reaching \$330 billion. This only looked at the economic impact of that cost. What about the cost of human pride and dignity of people who have spent their entire lives building a country and building a family and accumulating assets only to find their only alternative for caring for themselves or their spouse, parent or other loved one, is to turn to Medicaid.

We have arguably the best system of health care delivery in the world. Long-term care is a part of that, but the advances that we have enjoyed have outstripped our ability to pay for them and there are not mechanisms in place. Just consider the fact that the fastest growing segment of our population is the age group of 85 and above. When the mechanisms in place today were developed, we never foresaw that kind of dynamics. They were developed in the 1940's, 1950's and 1960's and we have jerry-rigged them to bring them to the future.

Therefore, the assumptions and rationales for current reimbursement strategies were not created with current dynamics in mind and we need to rethink them and find solutions that are based on both the demographic and economic realities of the 21st Century.

The current system must be modified to empower individuals to plan for and provide for their own long-term care. Government must create a public policy environment that encourages Americans to protect themselves and the private sector has to step up to the plate not only with affordable long-term care insurance but with other products that will also allow for the protection of assets and the protection of consumers.

Thank you very much.

[The prepared statement of Nona Bear Wegner follows:]

PREPARED STATEMENT OF NONA BEAR WEGNER, SENIOR VICE PRESIDENT, THE SENIORS COALITION

Good afternoon. My name is Nona Bear Wegner and I am Senior Vice President of The Seniors Coalition. The Seniors Coalition is a non-partisan, non-profit advocacy organization representing older Americans and their families. On behalf of the more than 3,000,000 members and supporters of the Seniors Coalition, I thank you for the opportunity to offer our remarks before the Health and Environment Subcommittee. I have come to testify in support of H.R. 540 which has been introduced by Mr. Bilirakis and Mr. Davis. I would like to take this opportunity to thank both of you for your leadership on this issue, and for the continuing work of this Subcommittee in helping to protect the health of older Americans.

I would, for just a moment, also like to offer thanks to the ranking minority member of this Subcommittee, Representative Henry Waxman, a cosponsor of this bill, for the leadership he has provided on this matter and in making safe, effective low-

cost generic medicines available in the marketplace. They have been lifesavers both medically and financially for so many of our members, and indeed all Americans.

The nursing home industry is a vital element in the continuum of care available to Americans of all ages, particularly the elderly. It provides an invaluable service to the most frail and vulnerable, as well as enormous relief to the families who trust nursing home operators to care for their family members. Consequently, it is essential that we have conditions that both encourage private operators to make the investment necessary to operate these vital facilities and, at the same time, protect the patients and their families from being suddenly and unfairly denied continued access to such care. Finding and striking the right balance between the rights of operators and their investors and the rights of consumers and their families is a difficult process. The fact that such a wide array of consumer and operator associations are supporting this bill is a tribute to the careful, painstaking manner in which Congressmen Davis and Bilirakis have labored to craft this measure.

Now let me return to the legislation under consideration here today. H.R. 540 would prohibit transfers or discharges of residents in nursing homes when the operator voluntarily withdraws from the Medicaid program. Additionally, it provides for disclosures—in writing—to clients and prospects concerning the intentions of operators in regard to Medicaid participation. Let me address several aspects of this package.

First, consumers must have adequate information to make informed decisions. The most basic premise of our free market economy rests on this simple fact.

Second, it is unfortunately a fact of life that the nursing home industry operates in a marketplace environment in which Medicaid is responsible for more than 40% of all financing. Naturally, private operators will respond or not respond according to the adequacy of government compensation rates. When Vencor or any other operator's asked to provide both care and medical support to its patients at a cost significantly above the reimbursement rate, we should not be surprised that eventually it and other operators will look for alternative—and more adequate compensation.

Third, nursing home residents and their families cannot be faced with being turned away without notice, warning, or alternative. That is intolerable.

Clearly, it is essential that the kinds of practices and safeguards outlined in the Bilirakis-Davis proposal be enacted into law. This bill recognizes the realities of this fragile and volatile industry, while building in safeguards against unfairness by establishing a threshold of full-disclosure. Through this, nursing home residents and their families will receive the information necessary to carry out the difficult planning and decisions which must be made in caring for elderly parents and friends.

A feature contained in the legislation proposed last year called for a five-year study to assess the impact of this law and of reimbursement rates on Medicaid participation by and consumer access to nursing homes. My initial reaction was that this was too long a period of time. I know that the current version of this legislation has deferred that study in light of another on-going study which will be reported to the Congress. I believe it is essential that this on-going study be comprehensive enough to answer all of the questions surrounding industry trends, and the impact of full-disclosure and reimbursement rates on the availability of Medicaid beds for elderly residents in nursing homes. I would not want any provision of this law to delay that study, but I think it is important that all the questions anticipated in last year's five year study provision be answered. Except for that one caveat, I believe the present form of the legislation constitutes a reasonable measure providing necessary information, full disclosure, and consumer protection. I am especially glad to see that it does so without plunging into the trap of counter-productive over-regulation and burdensome micro-management by bureaucratic fiat we so often see and experience.

Finally, it must be said that the anguish of the families who are faced with situations like those in Tampa are perhaps the tip of the iceberg, for their plight is symptomatic of a far greater problem. In fact, it is a symptom which points to a reality we are only just now beginning to face: Far too many Americans are not prepared to face the cost of long term care, and neither the Medicaid budgets of the 50 states nor the federal treasury can continue to absorb the impact of such costs. Industry projections suggest that in just 30 years, the number of nursing home residents will double. This dramatic increase in the number of patients combined with the increased costs of providing services suggest that total expenditures for nursing home care will quadruple—reaching \$330 billion. Moreover, this looks only at the economic reality of the aging of our society, not the human cost. What of the dignity of proud Americans who, after spending a lifetime building our country and providing for their families, find they must turn to Medicaid to provide for their loved ones or themselves?

The American system of health care delivery, including our network of long-term care, may well have no equal in the world. But it is also true that our advances in medical care for both chronic and acute illness have expanded explosively, and in many cases are beyond the adequacy of mechanisms available to pay for this care. Just consider that the fastest growing segment of our population is the cohort age 85 and above, and by some estimates the number in this age group will triple in the next thirty years. The assumptions and rationales for current reimbursement strategies were not created with this dynamic in mind. We must rethink our assumptions—and find new solutions to the problem, solutions that take into account the demographic and economic realities of the 21st century.

Just as the Bipartisan Commission on the Future of Medicare is looking at ways to save Medicare and make it responsive to the needs of seniors in the next century, we need a new solution for solving the problem of financing long-term care. In the latter half of the 20th century we have relied upon public-private sector partnerships that have evolved over time. The staggering number of those who will need long term care and the equally staggering costs of such care means that, under current economic realities, fewer and fewer individuals will be able to foot the bill privately. Nor is there enough money available in federal and state budgets to pay the cost of long-term care over the next thirty years.

The current system must be modified to empower individuals to address, plan for, and provide for their own long-term care. It is a task that can be done through a new public private partnership. Government must create public policy which encourages Americans to protect themselves against the costs of nursing home care. Similarly the private sector must step up to the plate with a variety of products which will provide this protection for the consumer. In short, there must be new and better tax incentives for the purchase of long term care insurance and similar products if we are to avoid disaster.

We urge this Subcommittee and this Congress to move beyond finite aspects of the problem and to utilize tax credits and other measures to encourage today's "middle-agers" and "Generation Xers" to acquire the necessary financial and insurance instruments to provide for their own long term-care.

Thank you.

Mr. BILIRAKIS. Thank you very much, Ms. Wegner.
Mr. Martin?

STATEMENT OF JAMES L. MARTIN, PRESIDENT, 60 PLUS

Mr. MARTIN. Thank you.

Good afternoon. I'm Jim Martin, President of the 60 Plus Association and I enthusiastically endorse what Ms. Wegner has just said.

Thank you, Mr. Chairman, for holding this important hearing. I bring greetings from a colleague of yours, former Congressman Roger Zion of Indiana, who is the 60 Plus Association's honorary chairman. Congressman Zion has asked that a news article from his hometown paper, the Evansville Courier Press, be made a part of this record. The article highlights another nursing home problem.

Mr. BILIRAKIS. Without objection.
[The article follows:]

[Tuesday, February 2, 1999—Evansville Courier & Press]

LEGISLATORS CALL TREATMENT IN NURSING HOME CASE "INHUMANE"

By Roberta Heiman, Courier & Press Staff Writer

To force William Lockard or any other elderly person to leave a nursing home, after having required them to sell their own home, "would be inhumane," say Evansville's four state representatives.

The legislators Monday asked Gov. Frank O'Bannon to review how his administration is enforcing Medicaid continuing-eligibility rules in nursing homes and to consider other alternatives.

Their action came in response to the dilemma of 86-year-old Lockard and his wife, Pauline, 82.

The Lockards, married for more than 65 years, have both been patients at Pine Haven Nursing Home in Evansville for two years. She is blind and bedfast. He has heart problems and early stages of dementia, but Medicaid reviewers add he doesn't need nursing home care anymore and must leave.

But he has no home to return to, because under state Medicaid rules a couple has to deplete their resources to only \$2,250—including their home and life's savings—to pay the nursing home bills themselves before Medicaid will help.

"We have several concerns about the state's actions and state policy in this situation," State Reps. Jonathan Weinzapfel, Dennis Avery, Vaneta Becker and Brian Hasler said in a letter to O'Bannon.

"...As you are aware, one must impoverish oneself to become eligible for Medicaid assistance for nursing home care," the legislators wrote. "Once that happens, does the state not have an obligation to continue providing Medicaid assistance for that person to remain in a nursing home even though their medical condition may improve?"

"Once impoverished, such a person would have nowhere to go if they did not have a supportive family. Such action would be inhumane," they concluded.

They said they hope Medicaid's ruling on Lockard will be reversed by an administrative law judge who conducted a hearing Friday on the family's appeal. The judge's ruling will come later.

In addition, the legislators asked O'Bannon to find out if Medicaid reviewers were following the guidelines he called for more than a year ago—to consider socioeconomic factors, not just medical factors, when determining eligibility for continued nursing home care.

Elder-law attorneys and Medicaid officials said the Lockard case is unusual, because it isn't common that both a husband and wife would have to enter a nursing home at the same time.

But when it does happen to elderly Hoosier couples, they said, Indiana forces them to deplete their assets to only \$2,250—spending all they've worked for and saved over the years—before Medicaid will help pay the nursing home bill.

And if one of the couple improves in health a few years later and has to leave the nursing home, he or she has no home to go back to and no resources to start over with.

"The rules obviously need to be changed," said attorney John Buthod, a member of the Evansville Bar Association's elder law committee.

Buthod said in most cases only one of the spouses has to enter a nursing home, and state law allows for protecting the other spouse against impoverishment.

But when both spouses have to enter a long-term care facility, or when the person is single and has no spouse, the law doesn't provide for protecting or sheltering most of their assets, he said.

"The law is trying to achieve some sort of balance—to make sure people are provided for but protect taxpayers from an undue burden," Buthod added. "But a lot of work needs to be done. It's not a very good system yet."

The state no longer places a lien on a couple's home when just one enters a nursing home, said Cindy Stampler, state Medicaid eligibility manager.

But the rules are different when both spouses need nursing home care, or when there is no spouse and a single person enters a nursing home, she said.

Stampler said it's possible for a couple or individual in good health to transfer their assets to their children at least three years before they might have to enter a nursing home.

But Buthod said that's not advisable. "That isn't really protecting their assets," he said. "It would not only rely on the good will of the kids, but would subject the home to potential creditors of the children. It's not generally a good idea."

He said one allowable step is to buy a prepaid funeral plan, which Medicaid doesn't count against the asset limits.

Indiana's assets limits of \$1,500 for an individual and \$2,250 for a couple are among the lowest in the country and haven't been increased for at least 15 years, Stampler said.

Regulations vary from state to state.

Most states allow at least \$3,000 for a couple, and some allow more. But Buthod said none are really adequate to provide for a situation like the Lockards.

In their letter to O'Bannon, the legislators said part of the problem is Indiana's limited program of room-and-board assistance and other alternatives to nursing home care.

Mr. MARTIN. On behalf of 60 Plus, I appreciate this opportunity to testify and while I have a formal statement, Mr. Chairman, I would like to make a personal observation.

I came to Washington, D.C. as a young reporter way back in 1962 for a group of newspapers, including the Tampa Tribune, which I was pleased to learn uncovered this nursing home scandal. I started reporting on Congress back then when John Kennedy was in the White House and yes, I covered that tragic moment in our history, his assassination; Neil Armstrong's walk on the moon; and Strom Thurmond was still a Democrat, he was even South Carolina's junior Senator. My point being that while others here today have touched on the details of this nursing home scandal—and my official testimony does likewise—I would like to make an observation from the perspective of 37 years working on and around Capitol Hill.

I've seen a lot of pitched political battles, perhaps none more contentious than the one which is hopefully ending as we meet here today. I believe that Congress has a window of opportunity, as has been expressed by the chairman and others, with this type of legislative initiative, H.R. 540, to start a bipartisan process, as the new Speaker has said, to work for the common good.

Clearly Democrats such as Jim Davis of Florida, Senator Bob Graham, and you, Mr. Chairman, a Republican, all of Florida and many of the other bipartisan co-sponsors are showing what working together can produce.

As Mr. Mongiovi has said, nursing homes become just that, homes. They are not a hospital room nor a hotel room. They are home to these patients. California and Tennessee have adopted a similar proposal: attrition, not eviction, should be the rule so indigent patients do not suffer relocation trauma. In short, if you take 'em, keep 'em.

60 Plus is a national, nonpartisan seniors group with half a million seniors, 30,000 in Florida, including my favorite senior, my mom who is in her 80's, lives in Okeechobee and she still works part-time.

60 Plus publishes a Congressional scorecard of key votes which is the basis of our Guardian of Senior Rights Award that is given to Democrats and Republicans alike. H.R. 540 is a shining example of the type of legislation that 60 Plus will consider for its scorecard. Kudos to Congress and we urge its immediate passage.

Thank you.

[The prepared statement of James L. Martin follows:]

PREPARED STATEMENT OF JAMES L. MARTIN, PRESIDENT, 60 PLUS ASSOCIATION

Mr. Chairman and Members of the Subcommittee, I am pleased to be here today to testify in support of H.R. 540, the Nursing Home Resident Protection Amendments of 1999. I bring greetings from the 60 Plus Association Honorary Chairman, former Congressman Roger Zion, a member of this body from Indiana for eight years, 1967-1975, who is unable to attend today's hearing.

60 Plus is a six-year old national, nonpartisan senior citizens advocacy group with half a million members nationwide, an average of 1,000 per Congressional District. We pursue efforts to give them a greater voice in their destiny and the spending of their money.

60 Plus publishes a Congressional Scorecard based on key votes affecting seniors. The scorecard is the basis for our "Guardian of Seniors" Rights Award" given each session to Members of Congress, Democrats and Republicans alike, who are "senior friendly." This proposal, H.R. 540, with strong bipartisan support, is the type of proposal which 60 Plus strongly supports and urges that it be reported out of committee and voted on by Congress. It is the type of legislation which we will consider including as a key vote for our next scorecard.

I note that Chairman Bilirakis has been a recipient of our highest honor, the "Guardian of Seniors' Rights Award", in previous Congresses and it is this type of legislative initiative that endears the Chairman to senior citizens. Martin/Page 2

While 60 Plus seeks a reduction of federal government controls and less regulation, we recognize that there are certain abuses which require some new legislation and/or regulations to protect our senior citizens. One instance is the current situation with nursing homes and the abuse of Medicaid patients.

We are dealing with a vulnerable population. Seniors may reside in these homes for many years and they begin to identify the nursing home as part of their own community. This is becoming more of an issue as a greater number and percentage of that population lives on into their 80's and 90's and beyond. I know I was alarmed to read and hear of nursing homes and nursing home chains taking the action of evicting seniors from nursing homes. Though reimbursement may be lower for Medicaid patients, we need to preserve their rights. Even with the lower reimbursement, it is still beneficial for nursing homes to provide assistance to these patients, rather than to have empty beds.

This legislation protects Medicaid patients and it also protects the property rights of nursing home owners. As I understand it, it does not require any nursing homes to accept Medicaid patients. However, once a nursing home does accept Medicaid patients, it would protect those patients from being evicted by these nursing homes or transferring that resident. We don't want "granny" or "grandpa" arbitrarily sent away or evicted from a nursing home for no legitimate reason.

We must halt this discrimination against Medicaid patients. We must not allow nursing homes to empty their beds of Medicaid patients. This bill is fair to the owners and the chains running nursing homes in that if they decide not to accept Medicaid patients, such nursing homes can follow a procedure to terminate voluntarily their participation in the Medicaid program. New residents then must be notified of such a policy and that they might be transferred or discharged at some later date.

I want to thank you again, Mr. Chairman and members of this subcommittee, for inviting me to testify before you on this important legislation. In closing, in accordance with the Truth in Testimony regulations, I am pleased to announce that we neither accept nor solicit federal funds or federal grants for the 60 Plus budget. 60 Plus depends 100% on voluntary donations from its supporters.

Mr. BILIRAKIS. Thank you very much, Mr. Martin.
Ms. Schild?

**STATEMENT OF KELLEY SCHILD, ADMINISTRATOR,
FLORIDEAN NURSING AND REHABILITATION CENTER, ON
BEHALF OF THE AMERICAN HEALTH CARE ASSOCIATION**

Ms. SCHILD. Hello, Chairman Bilirakis. Good afternoon, members of the subcommittee.

My name is Kelley Schild and I am the Administrator of a nursing home in Miami named Floridean. I operate a small, independently owned, family run nursing facility that cares for 60 residents. I am here on behalf of the American Health Care Association to give you our perspective on H.R. 540 introduced by Congressman Davis and Senator Graham, called the Nursing Home Resident Protection Amendments of 1999.

When I heard the plight of the residents that were discharged from the nursing home in the Tampa area, I was sad and angry. Let me state at the outset that we do not condone the action taken by the nursing home and are gratified to hear that all the discharged residents were readmitted. They paid fines to the State and Federal Government and made changes in their company to prevent this from happening again.

As providers of care, I make it my life's work to provide an environment that is safe and happy and secure for my residents. We know better than anyone else that our facility is really their home. In fact, under current nursing home law, facilities are prohibited

from discharging residents for any reason unless secure and alternate living arrangements have been provided.

We are a critical part of our Nation's social safety net. It is our responsibility to make sure they are cared for and we do that well. I will state up front that we firmly support your legislation. I commend your leadership and foresight in addressing the issue in a straightforward and inclusive manner.

It is important to note though that this discussion must look deeply enough beyond the emotional arguments and litigation to find the root cause of why we are sitting here today. In my view, most caregivers know it's illegal to discharge a resident just because they spend down and become Medicaid-eligible. Your legislation lays out a policy and process which is clear and provides both providers and residents when a discharge may occur. Importantly, it also sets up a process by which new residents are notified of a facility's decertification and providers can still withdraw from participation in Medicaid if they must. In many cases, the reasons to decertify are compelling. Let me explain.

It runs counter to everything we do day in and day out to think someone would transfer a resident against their best interests. So the question is, why does it happen? The answer lies in the Medicaid system itself, its requirements and its policies.

If you really want to help nursing home residents, we need to fix Medicaid today. Let me lay out two brutal facts about Medicaid in Florida. One, Medicaid reimbursed does not cover the full cost for caring for Medicaid residents in over 80 percent of Florida's nursing homes. Two, 68 percent or over 2 out of 3 nursing home residents rely on Medicaid to pay for their care. This is true, but rather than talk about Medicaid programs and policies, I would prefer to talk about the people involved and the effect it has on their lives. I'd like to talk to you about my residents and our struggle to provide them with high quality care.

Let me tell you about Mary. She's going to be 95 in July and she's one of my favorite residents. My father and her son flew together for many years. She came to our facility approximately 2 years ago when her family could no longer care for her because of advanced Parkinson's. Her disease causes her difficulty in speaking and especially in swallowing. She needs to see a speech therapist to help her. She needs help at mealtimes, bathing, toileting and wheeling around the home and in virtually everything she does. Medicaid inadequacies limit the time we can give to her, to have her face there every day.

She also has muscle contractures which are painful. She needs a nursing rehab assistant to exercise her arms and legs so these contractures don't develop.

Mary loves to interact with me and my staff but we need to take time to sit and talk to her because she has difficulty getting her thoughts into words. She's alert and enjoys communicating. She cannot participate in any other activities.

Unfortunately, the State of Florida pays my facility \$87 a day for Medicaid patients. Mary's care costs us \$133 per day, so while I'm blessed to have Mary with me and would never dream of discharging her, my family business loses \$45.95 every day because that's

what Medicaid dictates. So it goes with 68 percent of the residents nationwide who rely on Medicaid to pay for their care.

How do nursing facilities stay in business when Medicaid does not cover the cost of the care? Fortunately, my facility has a balance between Medicaid and private-pay residents. Because of that balance, I'm able to provide quality care to all of my residents regardless of their pay source, but other facilities face a crisis. If they have 80 to 90 percent Medicaid, those residents may be very sick and have high, acute needs. Medicaid is not paying for the kind of care these residents need. They can't economize by spending less on food, they cannot cut back on staff, they cannot diminish the quality of care provided. These facilities are in a Catch-22. Their facilities are filled with Medicaid residents, they can't afford to subsidize their care and they can't afford to go without them. This bill, H.R. 540, will set up the process by which facilities which need to decertify from Medicaid can do so without either discharging current residents or being perpetually stuck in Medicaid due to the constant stream of residents spending down to eligibility.

While I firmly believe that Congress must do much more in the area of Medicaid reform and long-term care planning for the babyboomers, this legislation eases a difficult situation and protects residents from involuntary discharge.

Thank you for your consideration.

[The prepared statement of Kelley Schild follows:]

PREPARED STATEMENT OF KELLEY SCHILD, ADMINISTRATOR, FLORIDEAN NURSING AND REHABILITATION CENTER ON BEHALF OF THE AMERICAN HEALTH CARE ASSOCIATION

Hello Chairman Bilirakis, good afternoon members of the subcommittee, my name is Kelley Schild, and I am the administrator of the Floridean Nursing and Rehabilitation Center in Miami. I operate a small, 60-bed home which is the last independently-owned, family run, nursing facility in Miami. I am here on behalf of the American Health Care Association, to give you our perspective on H.R. 540, introduced by Congressman Davis, and Senator Graham called the Nursing Home Resident Protection Amendments of 1999.

When I heard of the plight of the residents who were discharged from the nursing home in the Tampa area, I was shocked. Let me state at the outset that we do not condone the action that was taken by the nursing home, and we were gratified to hear that they had invited all the discharged residents back, paid fines to the state and federal government, and made changes in their company to prevent this from happening again.

As providers of care, we make it our life's work to provide an environment that is healthy, happy, and secure for our residents. We know better than anyone that our facility really is their "home", and we do everything in our power to make sure that those we care for are secure that the home we provide *will be there for them*. In fact, under current law nursing facilities are prohibited from discharging any resident unless they have secured an alternate living arrangement. We are a critical part of our nation's social safety net, it is our responsibility to make sure they are all cared for, and we do that well.

I'll state up front that we firmly support your legislation, I commend your leadership and foresight in addressing the issue in a straightforward, and inclusive manner. It is important to note though, that this discussion must look deeply enough beyond the emotional arguments, and litigation, to find the root cause of why we are sitting here today.

In my view, most caregivers know it is illegal to discharge a resident just because they spend down their assets and hence become Medicaid eligible. However, your legislation lays out a policy and process which is clear to both providers and residents as to when a discharge may occur. Importantly, it also sets up a process by which new residents are notified of a facility's decertification, and providers can still withdraw from participation in the Medicaid program if they must. And in many cases, the reasons to decertify are compelling. Let me explain.

It runs counter to everything we do, day in, and day out, to think that someone would transfer a resident against their best interests. So the question is, why does it happen? The answer lies in the Medicaid system itself, its requirements and its policies. If you really want to protect nursing home residents, you must fix Medicaid now.

Let me lay out two brutal facts about Medicaid in Florida. Number one: Medicaid reimbursement does not cover the cost of caring for the Medicaid residents in over 80% of Florida's nursing homes. Number two: 68% (over two out of every three) nursing home residents rely on Medicaid to pay for all of their care. This is true, but rather than talk about government programs, I'd prefer to talk about the people involved, and the effect on their lives. I'd like to talk to you about my residents, and the struggle to provide them high quality care.

Indulge me briefly, and let me tell you about Mary. She is turning 95 years old this year, and is one of my favorite residents. She's a friend of my family, and I feel lucky to have her with me. Mary's son was a pilot, and he and my father flew together and were good friends. A few years ago, Mary's advanced Parkinson's disease became too much for her family, and she came to Floridean Nursing and Rehab Center. Her disease causes great difficulty for her in speaking, and especially swallowing. She needs to see a speech pathologist frequently, and has trouble at meal time. But the things she needs most are for us to give her our time and TLC. This is true at meal time, bathing, toileting, wheeling her around the home, and in virtually anything else she does. Medicaid inadequacies limit the time we can give to her, and I have to face that everyday.

She also has muscle contracture, which is painful and makes her daily activities very difficult. She needs range of motion therapy two times a day to help her contracture.

Mary loves to interact with me, my staff, and the other residents. She's very alert and tries hard to communicate. She asks to be wheeled to the activities room and, though she can't participate, she just likes to watch her friends as they do the activities we plan. You should see her face light up when her great-grandchildren come to visit. I feel lucky to have Mary with us in so many ways.

Unfortunately, the state of Florida has a flat rate for all Medicaid residents of \$94.38 per day. This is the price that they are willing to spend for Mary's care regardless of her needs. On the other hand, being as efficient and prudent as I can afford to be, the cost of providing care for Mary is \$133.00 per day. So, while I am blessed to have Mary with me, and would never dream of discharging her, my family business will lose \$38.62 every day because that's what Medicaid dictates. So it goes with 68% of nursing home residents nationwide who rely on Medicaid to pay for their care. Despite the fact that the Federal Government pays for over 60% of Medicaid program costs through the state match, you have removed yourselves completely from responsibility in the area of payment adequacy. This, in my opinion, is at the heart of the problem.

How do nursing facilities stay in business when Medicaid does not cover costs on 80% of its beneficiaries, you may ask? Well, I am fortunate. My facility has only 50% Medicaid residents, about 2% are paid by Medicare, 4% are paid through VA or private insurance, and the other 45% are spending their life savings in the cruel requirement that they become impoverished before they can receive underfunded government long term health care through Medicaid. In brutal honesty, I cost-shift to make it work for everyone. Unfortunately, with half of my residents on Medicaid, and another 45% spending down, the effect of cost shifting is that they go broke faster and qualify for Medicaid sooner. This is a terrible way to treat our elderly during what are supposed to be their "golden years".

Now, a facility less fortunate than mine may have as many as 80%-90% Medicaid residents, and those residents may be very sick and have high acute care needs. With some residents, the medication costs alone exceed \$94.38 per day. This facility will not be able to shift costs, and may be on the verge of bankruptcy. What is this facility to do? Should they provide less care and incur bad ratings and with \$10,000 per day fines levied through the annual HCFA inspections, or face millions of dollars in jury awards from the rampant litigation in Florida? Should they try to economize by spending less on food? heat? staff? The answer is No. This facility has no choice. In order to provide quality care to tier residents, they must get out of the Medicaid program. They must take residents with other payor sources that actually do cover the cost of care. Medicare is adequate unless the resident is very sick, but it only covers 21 days fully. Private insurance pays adequately, but only 3% of people are covered, and most of the others are spending their lifesavings, eventually surrendering their dignity and independence as they become destitute enough to qualify for Medicaid.

So you can see that a facility in Florida which cannot cost shift must get out of the Medicaid program. Unfortunately, providers are in a "catch 22". With 68% of all nursing home residents on Medicaid, decertification is not an option for most facilities due to the difficulty of filling the empty beds that would result. Those that can cost shift some may only be able to provide minimal staff time and therapies to those that need them. When you repealed the Boren amendment in 1997, you took away the requirement that payment through Medicaid be adequate to meet costs. This has steepened the grade of a very slippery slope for providers.

This bill, H.R. 540, will set up a process by which facilities which need to decertify from Medicaid can do so, without either discharging current residents, or being perpetually stuck in Medicaid due to the constant stream of residents spending down to eligibility.

While I firmly believe that Congress must do much more in the area of Medicaid reform, and long term planning for the care of the baby boomers, this legislation makes a difficult situation more navigable, and protects residents from any involuntary discharge. Thank you for your concern and consideration.

Mr. BILIRAKIS. Thank you very much, Ms. Schild.
Ms. Grant?

STATEMENT OF ROBYN GRANT, SEVERNS & BENNET

Ms. GRANT. My name is Robyn Grant and I'm here today as an advocate representing the National Citizens Coalition for Nursing Home Reform known as NCCNHR. NCCNHR is a nonprofit organization of consumers, residents and their advocates who define and achieve quality for residents in long-term care facilities.

For 8 years, I served as the Indiana State long-term care ombudsman and am currently a resident advocate for an elder law firm in Indiana.

I want to thank the committee members for holding this important hearing. NCCNHR strongly supports H.R. 540. This proposed legislation is urgently needed to ensure that residents on Medicaid are not arbitrarily evicted by providers who wish to convert to private pay status.

As has been noted here already today, many residents start off a nursing home stay by paying privately. However, with the high cost of nursing home care, they quickly exhaust their resources and have no choice but to rely on Medicaid. I would add that nursing homes often attract potential residents precisely because they participate in the Medicaid Program. In fact, many facilities assure private-pay individuals that they can remain even after they become Medicaid-eligible.

No one forces a facility to participate in Medicaid. It does so voluntarily. Medicaid-certified facilities cannot be allowed to simply abandon their Medicaid beneficiaries if they decide to withdraw from the Medicaid Program. H.R. 540 would protect residents in the facility who are or will become dependent on Medicaid for their care.

While there are laws that regulate transfer and discharge, as you have heard, there is nothing that requires a facility to continue to care for its current Medicaid residents or residents who shortly will come to be on Medicaid when it withdraws from the Medicaid Program.

I'd like to share with you what residents experience when those adequate protections don't exist. Beginning in January 1993, residents on Medicaid at Wildwood Health Care, a Vencor facility in Indianapolis, Indiana, were told they were being transferred to other nursing homes solely because they were Medicaid recipients.

I was the State ombudsman at the time and had the opportunity to speak with several residents and their families. These residents told me that they were devastated when they learned they had to leave. They said that residents throughout the entire facility were crying inconsolably at the news. They were all extremely upset and distressed. Many residents had lived at Wildwood for several years and explained to me they had established important friendships with other residents and strong relationships with staff. They told me the nursing home was like a family and indeed, for some, it was their only family.

One resident's daughter eloquently summarized this in a letter she wrote to Vencor. She states, "You have destroyed lives and emotions and torn apart families. Yes, many of these people, though not blood-related, considered their companions and friends as family. Your facility was their home. Physical and emotional health was gravely endangered by the insensitive actions of Vencor."

The residents I talked to also recounted how embarrassed and humiliated they felt at being evicted because they couldn't pay privately. Their self-esteem was badly affected by being singled out in such a public way for something they could not help.

Once this eviction process was set in motion, it moved forward inexorably. It was only as a result in Indiana of outspoken residents and family members, the work of United Senior Action, which is a citizens advocacy organization and a NCCNHR member group, and attention from the media that Vencor reversed its policy, but not until all but 7 out of 60 Medicaid residents had relocated.

The effects of forced eviction on Medicaid residents are long lasting. Wildwood residents continue to suffer even after the evictions were stopped. Months after they were relocated, residents were still upset and distressed. The effects are also far-reaching and insidious. I recently just this month spoke with a daughter whose mother is in a different Vencor nursing home in Indiana. She told me that she's afraid now to raise any concerns at all about her mother's care because her mother is on Medicaid and she's fearful that complaining in any way could lead to eviction.

While the efforts of residents, families and strong citizens' advocacy groups, combined with media coverage ended in a consumer victory that time around, it was certainly too late for Wildwood residents. Moreover, nursing home residents are too frail, too vulnerable and the impact on them is too devastating to rely on such an ad hoc approach to adequately protect them. H.R. 540 would add much needed protection for residents who depend on Medicaid for all or part of their care.

There are other ways, as noted here, in which residents on Medicaid are discriminated against and we also believe those issues need to be addressed, but H.R. 540 is an important step in fighting Medicaid discrimination. Passing this bill is critical to guaranteeing that nursing home residents don't become disposable pawns in corporate gains to maximize profit.

On behalf of NCCNHR, thank you once again for the opportunity to make these remarks in support of H.R. 540.

[The prepared statement of Robyn Grant follows:]

PREPARED STATEMENT OF ROBYN GRANT ON BEHALF OF THE NATIONAL CITIZENS'
COALITION FOR NURSING HOME REFORM

My name is Robyn Grant and I am here today as an advocate representing the National Citizens' Coalition for Nursing Home Reform known as NCCNHR. NCCNHR is a non-profit organization of consumers—residents and their advocates—who define and achieve quality for residents in long term care facilities. The National Long Term care Ombudsman Resource Center, funded by the Administration on Aging, is a NCCNHR program.

I am currently the manager of Resident Advocacy Services for Severns and Bennett, an elder law firm in Indianapolis, Indiana. In that capacity I work to educate and empower family members to advocate for good care for loved ones in nursing homes. Prior to assuming this position, I served as the Indiana State Long-Term Care Ombudsman for 8 years and as president of the National Association of State Long Term Care Ombudsman Programs for two years. The Long-Term Care Ombudsman Program is a federally mandated advocacy program that represents the interests of residents of long-term care facilities.

I want to thank the committee members for holding this hearing. NCCNHR strongly supports H.R. 540 which would prohibit nursing homes that accept Medicaid reimbursement from transferring or discharging residents solely because they are Medicaid beneficiaries.

The Need for H.R. 540—The Nursing Home Resident Protection Amendments 1999

The proposed legislation in front of you today is urgently needed to ensure that residents on Medicaid are not arbitrarily and capriciously evicted by providers who wish to convert to private pay status. It allows nursing homes to withdraw from the Medicaid program, while allowing Medicaid beneficiaries to remain in their home.

Today it is estimated that more than 60% of the residents in our nation's nursing homes receive assistance from the Medicaid program. Many residents start off a nursing home stay by paying privately. However, with the average annual cost of nursing home care between \$40,000-\$50,000, most people cannot continue such payments for very long. They quickly exhaust their resources and have no choice but to rely on Medicaid.

Nursing homes often attract potential residents precisely because they participate in the Medicaid program. In fact, many facilities assure private pay individuals that they can remain even after they have become Medicaid eligible.

No one forces a facility to participate in Medicaid. It does so voluntarily. Medicaid-certified facilities cannot be allowed to simply abandon their Medicaid beneficiaries if they decide to withdraw from the Medicaid program. This bill would protect residents in the facility who are or will become dependent on Medicaid for their care.

The Devastation Experienced by Residents Evicted From Their Homes

I'd like to share with you what residents experience when nursing facilities are allowed to evict residents simply because they are on Medicaid. Beginning in January 1997 residents on Medicaid at Wildwood Healthcare, a Vencor facility in Indianapolis, Indiana, were singled out and told that they were being transferred to other nursing homes solely because they were Medicaid recipients. I was the State Long-Term Care Ombudsman at that time and had the opportunity to speak with several of those residents and their families.

These residents told me that they were devastated when they learned they had to leave. They were extremely upset and distressed. One family member told me her mother was thrown into a deep depression upon being informed she could no longer live at Wildwood. The residents I talked with said that everywhere they looked, they saw other residents crying inconsolably at the news. The people, many of whom had lived there for several years, explained to me that this facility had become their home. As we all do in our homes, they had put down roots. They had established important friendships with other residents in the facility and strong relationships with staff. They told me that the nursing home was like a family. Indeed, for some, it was their only family. Being forced to move destroyed their family. One daughter of a resident eloquently summarized this in a letter she wrote to Vencor. She writes:

You have destroyed lives and emotions and torn apart families. Yes, many of these people though not blood related, considered their companions and friends as family. Your facility was their home. Physical and emotional health was gravely endangered by the insensitive actions of Vencor.

The residents I talked to recounted how embarrassed and humiliated they felt at being evicted solely because they couldn't pay privately. They reported to me that they had never in their entire lives been thrown out of any place. They were mortally

fied. Their self-esteem was badly affected by being targeted in such a public way for something they could not help.

The effect on residents was magnified by the atrocious and deplorable way the transfers were handled by the administration at Wildwood. Once this eviction process was set in motion, it moved forward inexorably. Outcries from residents and families did little good. Complaints to the state survey agency were of no help. In fact, that agency stated that deciding not to keep residents on Medicaid was a business decision which the facility had every right to make. It was only as a result of outspoken residents and family members, the work of United Senior Action, a citizens' advocacy organization in Indiana which is a NCCNHR member group, and attention from the media that Vencor reversed its policy and agreed to stop the Medicaid evictions.

The residents who were forced to move continued to suffer even after the evictions were stopped. I visited several of these residents months after they were relocated. They were still upset and distressed, and some began to cry during our conversations. They had clearly left an important part of their lives at Wildwood. On a poignant note, they told me they missed the gazebo that they had worked so hard to pay for in the other facility. As active members of the resident council they had themselves raised the money to build an outdoor gazebo at Wildwood. The gazebo that they had so loved and of which they were so proud served as a sad and lonely reminder of all that they had to leave behind and could never recapture.

The effects of forced eviction of residents on Medicaid also are far-reaching and insidious. I recently spoke with a daughter whose mother is in a different Vencor nursing home in Indiana. The daughter told me that she is afraid to raise any concerns about her mother's care because her mother is on Medicaid and she is fearful that complaining in any way could lead to eviction.

Public Outrage Stopped the Spread of Corporate Insensitivity

While the efforts of residents, families, and a strong citizens advocacy group, combined with media coverage, ended in a consumer victory that time, it was certainly too late for many Wildwood residents. Moreover, nursing home residents are too frail, too vulnerable and the impact on them is too devastating to rely on such an ad hoc approach to protect them.

Once again I thank you on behalf of NCCNHR for the opportunity to make these remarks in support of HR 540, which would add much needed protection for residents who depend on Medicaid for all or part of their care.

Other Corporate Discriminatory Practices Faced by Medicaid Beneficiaries

Unfortunately, being involuntarily transferred from their home is just one of numerous discriminatory practices that Medicaid eligible residents face. Often it is difficult for a resident on Medicaid to gain admission to a nursing home or to remain in a home because the facility has chosen to limit the number of Medicaid beds available. In other instances, facilities assess the finances of potential residents and will only admit them if they have enough money to pay privately for a certain period of time. These are just a few examples of the discrimination that advocates hear about daily from residents and their families. NCCNHR, which has witnessed these issues for over twenty years, stands ready to help the members of this committee and staff identify and address these and other problems that Medicaid beneficiaries encounter.

We applaud both the House and the Senate for their work on the Nursing Home Resident Protection Amendment. Medicaid eligible nursing home residents must not have to live their lives in fear of being evicted solely because they can't pay or continue to pay privately. Passing this bill is the only way to guarantee that nursing home residents do not become disposable pawns in corporate games to maximize profits.

Thank you for the opportunity to talk with you today about this important issue.

Mr. BILIRAKIS. Thank you very much, Ms. Grant.

Mr. Mongiovi, was your mother a private-pay resident at any time during her stay at the Vencor nursing home?

Mr. MONGIOVI. No, sir. She entered as a Medicaid resident.

Mr. BILIRAKIS. She entered as a Medicaid patient.

Mr. MONGIOVI. Four years prior to her eviction notice.

Mr. BILIRAKIS. Are you familiar with friends of your mom, other residents there who had been prior private-payers? Mr. Davis and

others have noted that a large majority of patients start off as private-pay and then spend down to become Medicaid-eligible?

Mr. MONGIOVI. If you enter as a private-pay resident, \$40,000 to \$50,000 a year, it doesn't take very long for your finances to be exhausted and you are going to be a Medicaid recipient sooner or later. So they use your assets or your private insurance well. Once they use it, they dump you for higher-paying beds. That's cruel, unjust, criminal in nature and should not be allowed.

Mr. BILIRAKIS. Ms. Wegner, your testimony indicates that providing tax incentives to encourage people to purchase private insurance is one of the key ways of trying to fix the problems that Ms. Schild and others have mentioned regarding inadequate reimbursements?

Ms. WEGNER. Yes, Mr. Chairman. It's certainly not the only one and I'm not here to say that I have all the answers. But as you know, in a number of States, there are some partnership arrangements which have been tried in which there is an incentive to purchase long-term care insurance and in some cases, it's a dollar-for-dollar exchange in terms of the amount the insurance pays and assets that can be protected.

As is often the case, when there is an opportunity in the marketplace for creative solutions, they do arise and certainly with the aging of our society and the number of people who will live well into their 80's and 90's, the incidence of chronic illness is going to arise and the incidence of nursing home need is going to rise. There just will not be enough tax dollars to cover it, so we have to look for private solutions too.

Mr. BILIRAKIS. I'm not sure whether Mr. Coburn will get into this in more detail or not, but he has great interest in that proposed solution. I'll let him speak for himself.

Ms. Schild, you've told us that low payment levels are the root of the problem and you expressed it quite well, I might add.

By the way, I would like to place in the record the fact that Congressman Jim Davis has stayed throughout this entire hearing. I think that is really very good of you to do that, Jim. We all appreciate that.

Mr. DAVIS. You bet.

Mr. BILIRAKIS. How many facilities does the American Health Care Association represent?

Ms. SCHILD. Mr. Chairman, 11,000.

Mr. BILIRAKIS. You state in your written testimony that Florida has a flat rate for all Medicaid residents. Aren't payment rates facility-specific and not uniform across the State?

Ms. SCHILD. Correct. It's a flat rate for each facility. It is facility-specific but a flat rate for each facility.

Mr. BILIRAKIS. Do you feel that the Federal Government should propose or mandate a uniform rate across States. How would you try to solve that problem?

Ms. SCHILD. I don't honestly believe that we can solve that problem today and with the parties here I would be more than willing to work with the committee to look at the global problem, as has been the case with Medicare and Social Security because we know the babyboomers are coming and it's going to be a larger problem.

Mr. BILIRAKIS. I guess my time is up.

Mr. Brown?

Mr. BROWN. Mr. Martin and Ms. Wegner, I'm not particularly familiar with your organizations. I saw your membership numbers and all. Where does your funding come from, if I could ask each of you?

Ms. WEGNER. Our organization was begun in the late 1980's from a grassroots movement to repeal the Medicare catastrophic insurance tax. Over 97 percent of our funding comes from contributions of our members.

Mr. BROWN. Small amounts?

Ms. WEGNER. Yes, \$10 or \$15.

Mr. BROWN. Mr. Martin?

Mr. MARTIN. In fact, in my official testimony, I point out under the truth and testimony provisions that we neither seek nor accept Federal grants but we are 100 percent funded by voluntary donations.

Mr. BROWN. Is most of that from small membership dues?

Mr. MARTIN. Yes, 99.9 percent exactly. We have about a \$15 average from people that believe in what we're trying to do here. As I said before, we neither accept nor solicit Federal funds.

Ms. WEGNER. That is true, Mr. Brown of my organization as well.

Mr. BROWN. Ms. Grant and especially Mr. Mongiovi, thank you for sharing your particularly difficult stories with us. That was very helpful.

Ms. Schild, you talked about \$87-a-day reimbursement and obviously nursing home-Medicaid rates have been lower over the last few years, have continually been reduced. How have nursing homes in Florida responded to that? How have they been able to continue to operate with lower rates?

Ms. SCHILD. I can give you the specifics about my facility and as I said in my testimony, I make sure there is a balance between the private-pay patients and the Medicaid patients.

Mr. BROWN. You have a much higher percentage of private-pay than the average nursing home, correct?

Ms. SCHILD. I have a much higher percentage of private-pay, about 45 percent private-pay, while we have about 50 percent Medicaid.

Mr. BROWN. How do you imagine that others have done it that don't have that mix? Is there a compromise in quality to do it?

Ms. SCHILD. Congressman, honestly, I do not know how a facility that is 80-90 percent Medicaid can provide the quality of care that the residents deserve. I honestly do not.

Mr. BROWN. If the rates at \$87 a day, as they squeeze those nursing homes and make it more and more difficult and the reasons to withdraw from Medicaid seem so compelling, why have not more nursing homes withdrawn from Medicaid?

Ms. SCHILD. Again, I cannot answer that. In my area in Miami, only one nursing home that I know of does not participate in Medicaid. As I said, it is almost a Catch-22 because a lot of facilities do rely on Medicaid for private-pay residents that spend down so that they don't have to be discharged.

Mr. BROWN. How are you able to keep your proportion closer to 50-50, the private pay-Medicaid, much closer than the national average? How have you been able to do that?

Ms. SCHILD. We are a facility that's been in the community for 55 years and it's been run by my family for that length of time. Therefore, referrals come from within the community, friends, family and that is the pool I suppose that we draw a higher percentage of private-pay residents from.

Mr. BROWN. Do you actively recruit private-pay patients more than Medicaid patients?

Ms. SCHILD. We currently have a waiting list and private-pay residents are on the waiting list as well as Medicaid residents. We do not really recruit. We're known in the community and residents seeks us out because of the quality of care provided.

Mr. BROWN. Is the waiting list chronological when you select from it?

Ms. SCHILD. When I make decisions to admit residents, it's based on the care that they need, the staffing we have at the time and Medicaid and private does factor into that to be quite honest.

Mr. BROWN. So you can keep the percentage about where it is?

Ms. SCHILD. Correct.

Mr. BROWN. You are a for-profit operation?

Ms. SCHILD. Yes, we're a corporation.

Mr. BROWN. Is there any chance that as some nursing home operators watch what Jim Davis is doing and see this bill is going through this process with a reasonable good chance of becoming law in the next few weeks or months, as fast as anything can ever move here, is there any chance that some nursing homes would leave the Medicaid Program between now and the time this bill goes into effect? Are we creating some incentive to accelerate that movement out temporarily before this bill becomes law?

Ms. SCHILD. Congressman, I don't think I can answer that. I know it wouldn't be the case in my facility.

Mr. BILIRAKIS. Mr. Coburn.

Mr. COBURN. Ms. Schild, I just want to clarify. Your answer to the gentleman from Ohio, the implication was that your Medicaid rates have gone down. Is that correct?

Ms. SCHILD. My Medicaid rate has gone down?

Mr. COBURN. Yes, your reimbursement under Medicaid has gone down over the last few years. Is that correct?

Ms. SCHILD. No, it has not.

Mr. COBURN. I think we need to correct that for the record because in fact, the rates probably have gone up somewhat, is that not true?

Ms. SCHILD. Correct, yes.

Mr. COBURN. The implication in the question being that we have cut Medicaid. In fact, I think most Medicaid reimbursements for most nursing home beds have gone up. I think we need to be aware of that. It is still far too low to provide for adequate care but they have not gone down.

Mr. Mongiovi, I have a lot of sons and daughters who have their parents in nursing homes. One of the things that really bothers me about what you said is still a real issue. Oftentimes my friends on the other side of the aisle have been better at attacking that issue than we have.

You said in your statement, not in your printed statement, but you said in your statement today that your wife would have to go

there daily to make sure she got the care she needed. Is it true you said that?

Mr. MONGIOVI. That is correct.

Mr. COBURN. Was there not anywhere else that you all could find for your mother that you didn't have to do that to make sure she got the care?

Mr. MONGIOVI. No, sir. My wife and I visited personally 16 nursing homes in 3 days, nonstop, from 8 a.m. to 10 p.m., and there was not one better facility that we would have put my mother in. The one that we chose, the atrocities occurred.

Mr. COBURN. But it's your opinion that had you not been there to provide supplemental care, she would not have had adequate care?

Mr. MONGIOVI. That is correct.

Mr. COBURN. I just want to make the statement for this committee, that is a real problem. As a physician who used to go to a number of nursing homes, and I don't any longer now that I'm in Congress, I saw that every day. The far greater problem that we have than this one is that problem. We should have a hearing on the inadequacy of the care that is now being given in some, not all, but in some nursing homes. Part of this is economic. As Ms. Schild said, she doesn't know how they do it. The way they do it is by limiting care, rationing care.

My contention is the more the Government gets into that, the more care will be rationed and the less care there will be. Unless we put marketplace incentives for people to buy long-term care insurance and to create their own future and not penalize them where they end up being in a position where they have to depend on a government program for substandard care because there really is a difference. If you have the means, then you can get better care. If you're on Medicaid, many times you don't get care that compares.

Mr. MONGIOVI. I agree with you fully, sir, but we have no control on how much care we are going to need.

Mr. COBURN. Right, but the point is if we change the system to where we design the marketplace to help us determine that and to provide an incentive to let market drive that, rather than the Government and regulations drive that, we may in fact see that we can offer better care, higher quality to more people in the future. That's my point.

We've had testimony here today, in fact, Ms. Schild makes a conscious decision if she wants to eat, that she's going to put people in her nursing home that are private-pay because the mix she's required to do that, if she wants to make a profit, she's going to have to do that. If she wants to keep a salary for her family and her business, she's going to have to do that.

What that means is that somebody that doesn't have private-pay isn't going to get into her nursing home which means there is a dual standard of care if she's a high quality, well thought of nursing home. So why shouldn't everybody have the potential to determine that themselves through their own private plan. The Government should create an incentive so that kind of long-term care would have provided your mother the choice to go wherever she wanted.

Mr. MONGIOVI. Your issue is well taken but we are speaking of a problem that has not been addressed by this country and it needs to be looked at. But that is a different subject matter than why we're here today.

I think the protection issue is essential to address immediately because we cannot afford to dismiss it. I for one would not want to play Russian roulette with the people out there right now.

Mr. COBURN. But we've had the testimony from HCFA that in fact the nursing home that ejected or attempted to eject all those in association with your mother was violating the Federal law.

Mr. MONGIOVI. Yes, they were.

Mr. COBURN. You had to go to court to stop that.

Mr. MONGIOVI. Exactly.

Mr. COBURN. That says two things to me. It says, the State of Florida failed in its supervision actions for the nursing home industry, one and two, so did HCFA.

Mr. MONGIOVI. Are you not addressing the major reason why this occurred, because it is still occurring and as we speak, the laws are still being broken because no matter what you just said, they are still going to break the law unless there is enough protection out there to say don't do it because you're not going to get away with it.

Mr. COBURN. So it's your opinion that the only way to stop what happened to your mother is this piece of legislation?

Mr. MONGIOVI. That is correct.

Mr. COBURN. That is the only way to stop it?

Mr. MONGIOVI. That is correct.

Mr. COBURN. Thank you.

Mr. BILIRAKIS. I thank the gentleman.

Your coming here today and supporting this legislation as strongly as you all do is obviously going to make quite a difference. Ms. Wegner and Mr. Martin represent organizations that are conservative, but they still feel there is a need for Government involvement. We need to spend more time with many of you in order to learn more. The idea Ms. Wegner mentioned, the tax incentive, should be considered along with other ways to attack the problem. Thank you so very much for coming.

There probably will be questions offered to you in writing from members of the committee and we would appreciate your responding to those as quickly as you can.

The hearing is adjourned.

[Whereupon, at 4:50 p.m., the subcommittee was adjourned, to reconvene subject to the call of the Chair.]

[Additional material submitted for the record follows:]

DEPARTMENT OF HEALTH & HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATION

February 25, 1999

Representative MICHAEL BILIRAKIS

Chairman

Commerce Subcommittee on Health and the Environment

2125 Rayburn House Office Building

Washington, DC 20515

DEAR CHAIRMAN BILIRAKIS: Thank you for the opportunity to testify before the House Commerce Subcommittee on Health and the Environment on nursing home evictions and H.R. 540. As discussed during the hearing, I am responding in writing

to questions you raised regarding nursing home evictions and other HCFA programs.

Question 1. How will H.R. 540 complement HCFA's efforts in safeguarding nursing home residents?

Answer 1. If passed, H.R. 540 would complement HCFA's efforts by strengthening our existing rules to ensure Medicaid residents can continue to stay in their nursing facility. HCFA has been working within the existing statutory authority on safeguarding nursing home residents from unnecessary transfers. We have released a program memorandum on the frequency by which nursing facilities can change the number of Medicaid beds in their facility. These safeguards compliment H.R. 540 by protecting beneficiaries from unnecessary transfers in the cases of where a facility frequently reduces the number of beds available to Medicaid beneficiaries without actually closing the facility over the course of a year. H.R. 540 addresses the similar issue when the facility decides to withdraw from participation in Medicaid.

HCFA released a program memorandum to our Regional Administrators on January 25, 1999 stating that nursing home providers that participate in Medicaid or Medicare by designating a limited portion of their beds for these program beneficiaries may only change their extent of participation once per cost reporting year. Before we issued this guidance, many States had noted that some providers changed their designated beds for Medicare and Medicaid on a weekly or even daily basis. In some cases, this see-sawing back and forth was used as grounds to evict Medicaid residents and make way for more lucrative clients, or to be rid of selected residents.

HCFA's once-per-year policy gives more protection against discharges based on frequent reductions in the extent of a facility's participation. However, the policy is not a complete solution. Under current law, the facility may still choose to downsize participation or to withdraw from Medicaid entirely. In the case of Vencor, the company announced its intent to have a portion of its facilities withdraw from Medicaid entirely in the Wall Street Journal article that precipitated the public's awareness of this problem. If Vencor had proceeded to withdraw legally rather than using illegal means to evict its residents, HCFA would not have been able to protect their current Medicaid residents from being transferred to other facilities.

Question 2. How do nursing homes adjust their participation in Medicaid for their facilities, and why would they do so?

Answer 2. Under HCFA policy, once a year nursing facilities are allowed to designate a specific number of beds to be Medicaid-only. Facilities must request the change in writing and identify its current configuration and the proposed configuration 120-days in advance of its cost reporting year. Some nursing facilities cite Medicaid payment rates that are lower than either private pay or Medicare rates to explain their decisions to reduce participation.

Question 3. H.R. 540 is a measured response to a significant problem in the nursing home sector. According to the written testimony of some of the witnesses on panel three, some nursing homes are opting out of Medicaid because the payment levels may be lower than the costs incurred by the nursing home. Do you agree that reducing provider costs would help increase the number of Medicaid beds?

Answer 3. Reducing provider costs would not necessarily increase the availability of Medicaid beds. We also do not believe there is any shortage of beds right now. And, States are required to conduct an open process for the development of Medicaid payment rates. Public input should ensure that payment rates are adequate.

Question 4. Which of the new initiatives that the Administration proposes would help reduce provider costs?

Answer 4. None of our proposals in FY2000 are expected to reduce provider costs, rather, these proposals are designed to improve the overall quality of care and quality of life provided in nursing homes. The initiatives in nursing home care include legislative proposals for requiring a mandatory criminal background check of all nursing home employees, and a national abuse registry, and allowing more nursing home staff to help residents eat and drink during busy mealtimes.

Question 5/6. What purpose is served by the HCFA policy that "a nursing home may decrease the portion of its facilities that are available to Medicaid or Medicare residents only once per year"? When did this regulation go through a notice and comment period? If it has not gone through a notice and comment period, by what legal authority was this new regulation imposed?

Answer 5/6. This once-per-year restriction is a policy included in HCFA's manual instructions to States. It does not appear in the Social Security Act or the corresponding regulations. This change in policy did not go through a notice or a comment period. The legal authority for this policy, like many of the technical aspects of the nursing home program, stems from the Secretary's general administrative authority.

HCFA has two manuals that provide policy guidance in the area of nursing facilities—the Provider Reimbursement Manual (PRM) and the State Operations Manual (SOM). The PRM is used by providers and the SOM is used by State survey agencies. The policy in the two manuals differed. This one per year restriction was included in the PRM, but not the SOM.

After hearing evidence that the flexibility in the SOM was being abused, we decided to rectify the conflict between HCFA policies by reaffirming the once-per-year restriction in the PRM. A program memorandum was released on January 25, 1999 to clarify this policy for the HCFA regional offices. We plan to change the SOM instructions to conform with this policy. The once-per-year policy provides an opportunity for providers to change extent of participation as necessary, but guards against excessive fluctuations and undue disruption to residents.

Question 7. If HCFA will allow nursing homes only one opportunity a year to adjust their ratio of Medicaid or Medicare beds to those that are privately funded, will that result in more or fewer beds available to Medicaid or Medicare patients?

Answer 7. We do not believe that limiting facilities' changes in extent of participation to once per year will have any net effect on the availability of Medicare or Medicaid beds. More importantly, this policy reduces the substantial health and safety risks that are associated with the transfer of frail elderly and disabled beneficiaries.

Question 8. In your written testimony, you state that HCFA has taken swift and strong actions against facilities who have discharged Medicaid residents on false grounds and without appropriate notice. In how many instances have you imposed civil money penalties on facilities? How much have you collected? Where does the money go? Is this an effective enforcement tool?

Answer 8. In the Vencor situation, HCFA imposed civil money penalties (CMPs) on both the Tampa, Florida, and Savannah, Georgia facilities. HCFA imposed and collected \$100,000 from the Tampa facility. The Savannah nursing home case is under appeal.

From July 1, 1997 to June 30, 1998, we imposed CNOs on 469 nursing homes. During FY 1998 we imposed \$9,762,742 in civil money penalties and collected \$7,520,638 of these. Our current database does not distinguish between Craws assigned specifically for transfer/discharge violations and those assigned for other types of deficiencies.

After collection, CMPs are split into Medicare and Medicaid portions, depending on the ratio of Medicare to Medicaid residents in the fined facility. In accordance with Section 1919(h)(2)(A)(ii) of the Social Security Act, the Medicaid monies are put back into the State's Medicaid program, to "be applied to the protection of the health or property of residents of nursing facilities...including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost." Medicare monies, consistent with Section 1128(A)(f)(3) of the Act, are deposited as miscellaneous receipts of the U.S. Treasury.

CMPs are among the most important tools we have for bringing facilities into compliance and protecting vulnerable nursing home residents.

During the hearing, you and other Committee Members mentioned an interest in meeting with HCFA staff to discuss a variety of health related issues. Carleen Talley of our Office of Legislation will be contacting your Committee staff to coordinate a roundtable discussion for Subcommittee Members and their staff in the near future. Thank you for your interest in our programs.

If you have any additional questions, please contact me.

Sincerely,

MICHAEL M. HASH
Deputy Administrator

DEPARTMENT OF HEALTH & HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATION
February 25, 1999

The Honorable TOM COBURN
429 Cannon House Office Building
Washington, DC 20515

DEAR CONGRESSMAN COBURN: I am responding to your questions raised during the House Commerce Subcommittee on Health and the Environment hearing on "H.R. 540, the Nursing Home Resident Protection Amendments of 1999."

Question 1. What percent of Medicaid beds experience eviction (or Vencor situation) in the U.S.?

Answer 1. Our data systems are not currently capable of providing this data. In an informal survey, HCFA staff polled 47 States Ombudsmen in 1997. Fifteen cited transfer and discharge violations as highly problematic.

Question 2. If H.R. 540 becomes law, what does HCFA propose that would prevent the situation as seen in Florida from happening again?

Answer 2. H.R. 540 would allow us to protect residents in the case of a facility's voluntary withdrawal from the Medicaid program. Residents would be assured that they can stay in their facility and that the facility would continue to be subject to the Medicaid conditions of participation, even though the facility has terminated its Medicaid agreement.

HCFA was able to address the situation that happened in Florida prior to H.R. 540. The Vencor situation clearly violated existing law, and we were able to take swift action. The strong enforcement response in this situation sends a clear message to other providers across the nation that this behavior is unacceptable.

Question 3. How many nursing homes voluntarily withdrew from the Medicaid program last year?

Answer 3. Our data indicates that over the last three years the average number of nursing facilities that voluntarily withdrew from the Medicaid program is 58 per year: 59 Medicaid facilities withdrew in FY1996; 54 in FY1997; and 60 in FY1998.

During the hearing, you also mentioned an interest in meeting with HCFA staff to discuss a variety of health related issues. Our Office of Legislation will be contacting the Chairman to coordinate a roundtable discussion for the Subcommittee Members and their staff in the near future. Thank you for your interest in our programs.

If you have any additional questions, please contact me.

Sincerely,

MICHAEL M. HASH
Deputy Administrator

DEPARTMENT OF HEALTH & HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATION

February 25, 1999

The Honorable SHERROD BROWN
*328 Cannon House Office Building
Washington, DC 20515*

DEAR CONGRESSMAN BROWN: I am responding to your question raised during the House Commerce Subcommittee on Health and the Environment hearing on "H.R. 540, the Nursing Home Resident Protection Amendments of 1999."

Question 1. Requested data on whether the reducing of Medicaid beds is occurring more now than in the past.

Answer 1. Our data systems do not currently provide information on the reduction of beds. We do know, however, that over the last three years the average number of nursing facilities that voluntarily withdrew from the Medicaid program is 58 per year: 59 Medicaid facilities withdrew in FY1996; 54 in FY1997; and 60 in FY1998.

During the hearing, you and other Committee Members mentioned an interest in meeting with HCFA staff to discuss a variety of health related issues. Carleen Talley of our Office of Legislation will be contacting the Chairman and your Committee staff to coordinate a roundtable discussion for Subcommittee Members and their staff in the near future. Thank you for your interest in our programs.

If you have any additional questions, please contact me.

Sincerely,

MICHAEL M. HASH
Deputy Administrator

NATIONAL CITIZENS' COALITION FOR NURSING HOME REFORM
WASHINGTON, DC

February 22, 1999

Chairman MICHAEL BILIRAKIS
*Subcommittee on Health and Environment
Room 2125, Rayburn House Office Building
Washington, D.C. 20414-6115*

DEAR CHAIRMAN BILIRAKIS: The National Citizens' Coalition for Nursing Home Reform (NCCNHR) thanks the Committee members and staff for the opportunity to have Robyn Grant testify in support of H.R. 540, the Nursing Home Resident Pro-

tection Amendments of 1999. The information from those who testified and additional facts elicited as a result of the members' questions allowed many viewpoints on the bipartisan bill. The two follow-up questions from your office are another opportunity to provide the consumer perspective on issues related to H.R. 540. NCCNHR's response to the two questions follows.

Question 1. How do nursing homes adjust their participation in Medicaid for their facilities, and why would they do so?

Response. Our information is based on the experiences shared with the NCCNHR by residents, family members, advocates and ombudsmen. In a number of states, facilities have the option of certifying and decertifying their beds at will. They can do so in order to accept or deny access to residents on Medicaid as it meets their own financial and caregiving needs. They would do so because when a Medicaid bed is available they are obligated to keep a resident who spends down to Medicaid eligibility. However, if they have no Medicaid bed, then they can transfer or discharge the person who has exhausted his/her funds and fill the bed with a person who pays privately or one whose care is paid for by the higher paying Medicare program.

From a consumer perspective requiring dual certification of all beds in the Medicare and Medicaid programs would diminish access problems experienced by those whose care is paid for by Medicaid. Only two states have dual certification of all facilities: Rhode Island and Alaska of facilities. None of the states, however, require dual certification of all the beds.

An historical perspective illustrates the precarious status of residents once they become dependent on Medicaid for all or part of their care. In *Linton v. Tennessee Commissioner of Health & Environment* (M.D. Term. April 20, 1990), the court found that the facility had violated Medicare law by denying the resident services under Medicaid. The court also said that the facility denied the resident her civil rights under Title VI of the Civil Rights Act, since minorities disproportionately use Medicaid to pay for care. The *Linton* case found that the Health Care Financing Administration, when it approved state plans, consistently required all beds to be certified, and states did not have the authority to approve a facility's request for certification of fewer than all the certifiable beds.

The Final, Final Regulations of 1991 changed the definition of "nursing facility" to "the entity that participates." HCFA explained that change in definition allowed residents to have the full protection of the law on transfers by calling a change from a Medicare distinct part to a Medicaid distinct part an inter-facility (not an intra-facility which has less protections) transfer. The effect has been to allow facilities to change bed designations at will, denying access to residents dependent on Medicaid for all or part of their care. HCFA testified that such changes are only allowed once a year, although NCCNHR has not seen an official copy of this new policy.

Question 2. Both The Seniors Coalition and the 60 Plus witnesses were asked how they were funded at the hearing, but your organization was not. How is the National Citizens' Coalition for Nursing Home Reform, the group on whose behalf you testified funded? Does the organization solicit or receive funding from governments at the local, state, and federal level?

Response. The National Citizens' Coalition for Nursing Home Reform signed the required form detailing the government grants we receive. It was attached to the testimony as suggested in the written directions for the hearing. NCCNHR received \$250,000 from the Administration on Aging in 1997 through March of 1998 and received \$290,000 from the Administration on Aging in 1998. This grant ends on March 31, 1999. NCCNHR receives no grants from local or state governments.

Other monies come from donations, memberships, sales of publications and subscriptions, and small grants from private foundations.

Please contact me if you have additional questions.

Sincerely,

SARAH GREENE BURGER
Executive Director

THE 60 PLUS ASSOCIATION,
February 24, 1999.

THE HONORABLE MICHAEL BILIRAKIS
Chairman, Subcommittee on Health and Environment
Committee on Commerce
U.S. House of Representatives
2125 Rayburn HOB
Washington, D.C. 20515

DEAR CHAIRMAN BILIRAKIS: I am responding to your request to answer two questions in your letter of February 12, 1999 regarding my testimony on H.R. 450, the Nursing Home Resident Protection Amendments of 1999.

Question 1. According to the letter of endorsement from AARP, H.R. 540 "offers important protections because of the documented problems that Medicaid patients face..." It is not often that your organization agrees with AARP. Why do you agree on the support of H.R. 540?

Answer. Rather than agreeing with AARP, we believe this is a case of the AARP agreeing with Chairman Bilirakis and the 60 Plus Association. The abuse cited in the nursing homes situation with Medicaid patient is a real problem and the solution does not require a change or expansion of the Medicaid program or an increase or decrease in funding. It is a loophole in the law which has allowed certain unintended consequences occur to senior citizens on Medicaid, e.g. discrimination against seniors in nursing homes on Medicaid. The proposed legislation seeks to correct this situation as a matter of fairness and equity. In this sense both the 60 Plus Association and AARP see this as a protection for seniors through a correction in the present law regarding Medicaid, rather than a new or expanded program.

Question 2. On what other areas do you find common group with AARP? On what matters do you differ?

Answer. Both 60 Plus and the AARP have testified on the same panel before a House Subcommittee investigating telemarketing fraud, with seniors often times the victims, with both groups calling for a crackdown. Both AARP and 60 Plus favor a discussion of the current problems with Social Security, though 60 Plus was the first to call for such a discussion. We favor a privatization or personalization of Social Security while AARP has been at least ambivalent in that direction. Overall, AARP favors an expansion of federal government programs while the 60 Plus Association favors less government, less regulations, more tax relief, and greater emphasis on the free market system to solve problems in our society. The AARP supported the Clinton budget which hiked taxes on middle class Social Security recipients (50 percent to 85 percent) while 60 Plus Association opposed it. In fact, we favor repeal of this tax hike. 60 Plus Association favors the repeal of the federal estate or "death" tax while AARP opposes this reform.

Sincerely,

JAMES L. MARTIN,
President.

THE SENIORS COALITION,
March 16, 1999.

Congressman MICHAEL BILIRAKIS
Chairman, Subcommittee on Health and Environment
Committee on Commerce
U.S. House of Representatives
Room 2125 RHOB
Washington, DC 20515-6115

DEAR MR. CHAIRMAN: On behalf of the three million members and supporters of The Seniors Coalition, I wish to thank you for inviting us to participate in the hearing on H.R. 540 and for allowing me to amplify our remarks through the questions you provided.

Again, thank you for your leadership on this and so many other issues. We look forward to working with you and your staff throughout this session.

Sincerely,

NONA BEAR WEGNER,
Senior Vice President.

RESPONSES TO QUESTIONS

Question 1. According to the letter of endorsement from AARP, H.R. 540 "offers important protections because of the documented problems that Medicaid patients

face..." It is not often that your organization agrees with AARP. Why do you agree on the support of H.R. 540?

Answer. There are a variety of issues on which all seniors groups can agree. Protecting the welfare of older Americans is both bi-partisan and non-partisan. The problems addressed by the Nursing Home Protection Amendments fit this description. Under no circumstances should nursing home residents and their families be subjected to misleading and unfair treatment.

The Seniors Coalition believes firmly that a free market system can help solve problems facing the body politic. However, the market system only works if accurate information is available to consumers, information upon which they can base their planning and decisions. Additionally, all supporters of capitalism look to government and the courts to prevent and punish fraud and deception.

The legislation introduced by Congressman Davis and co-sponsored by Chairman Bilirakis and so many other members of this Subcommittee in no way does harm to the private sector. In fact it buttresses the sound, fair, and efficient operation of the private sector by making certain that consumers receive full and timely information and disclosure of essential facts about nursing home care and operation so consumers can carry out sensible planning and make fully informed decisions. Any operators who do not want to operate within this equitable ethical framework can make choices that take their operations to other activities, but not by misleading current and future nursing home residents and their families.

Question 2. On what other areas do you find common ground with AARP. On what matters do you differ?

Answer. In many cases, AARP and The Seniors Coalition may both agree that a problem exists—whether that be quality of care in Medicare, adequate benefits for retirees, or prevention of crime against older Americans or any number of a host of other important issues facing seniors and their families. Where we often disagree is how these problems can best be solved. AARP often seems to advocate for a greater role for government in solving these societal ills, while The Seniors Coalition believes decreasing the involvement of government in the daily lives of Americans of all ages is a better approach.

For example, we also believe the government has made promises to our older Americans in both the Social Security and the Medicare programs which amount to contractual commitments. To accomplish this, we believe that the future requires bringing free market options and solutions to bear on these problems without compromising the benefits that existing recipients are receiving. However, simply pumping more money into old ways of doing things will only stave off but not eliminate impending crisis and bankruptcy in both Social Security and Medicare. Therefore, we want to use free market approaches and mechanisms to empower consumers and harness the innovative energies of the private sector to find solutions in both of these programs.

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