



American Health Care Association

STATEMENT

Of

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On Behalf Of The

AMERICAN HEALTH CARE ASSOCIATION

Before The

House Small Business Subcommittee on Investigations & Oversight

Hearing On

Impact of Predators in Long Term Care on Small Business Operators

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

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

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

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

Quality – AHCA’s First Priority

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

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

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

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

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

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

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

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

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

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

Assessment Is Critical to Determine Care Needs

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

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

GAO Report on Sex Offenders in Nursing Facilities

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

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

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

Barriers to Change

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

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

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

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

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

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

Recommendations for Change

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

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

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

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

Conclusion

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

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

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

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

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

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