

**STATEMENT
OF
THE HONORABLE BART STUPAK
SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS
“IN THE HANDS OF STRANGERS: ARE NURSING HOME
SAFEGUARDS WORKING?”**

MAY 15, 2008

This is National Nursing Home Week which makes today’s hearing quite timely. Surprisingly, this subcommittee has not held an oversight hearing about nursing home care since 1977. The make-up of the nursing home industry and its clientele has changed radically over the past 31 years.

The last significant change in nursing home regulations came 21 years ago in the Nursing Home Reform Act which was passed as part of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87). In that act Congress established standards for quality-of-care and quality-of-life that nursing homes must meet in order to receive payment from Medicare and Medicaid. Now, twenty one years later, we are examining whether these standards continue to provide an appropriate level of patient care and protection for residents of nursing homes.

Some of our most frail, elderly and disabled citizens live in nursing homes either for a short time for rehabilitation or for long periods, when it becomes their final home. Many are completely dependent on others for everything from eating to bathing, turning them over in bed, and pain management. Government regulations require that a base level of care be provided to nursing home residents not only because this vulnerable population often cannot speak for themselves, but also because taxpayer-funded programs like Medicaid and Medicare pay for the vast majority of care provided at nursing homes.

The Centers for Medicare and Medicaid Services (CMS) enforces these minimum standards by contracting with each state to conduct annual inspections, or “surveys,” of nursing homes. If state surveyors identify a problem, called a “deficiency,” they can recommend various sanctions to CMS, ranging from civil money penalties to the rarely-used, ultimate sanction of termination from participation in the Medicare and Medicaid programs. CMS and state surveyors strive hard to look behind a nursing home’s walls to see whether fragile nursing home residents are receiving all the care they need. However, surveys often fail to identify serious problems that threaten residents. Moreover, when the surveyors do identify problems, the penalties imposed by CMS can be so weak that they fail to bring about sustainable improvement in the practices of the facilities.

The day-to-day responsibility for the difficult task of care in nursing homes falls on dedicated and hard-working nurse aides, skilled nurse professionals, and industry owners and operators. We entrust our loved ones, often only as a last resort, to the hands of these strangers, to care for our grandparents and parents. In most cases, these strangers become a second family for us and our loved one, and they care for our family member with the same love and attention as if he or she were part of their own family. These devoted caregivers, and the companies that employ and manage them, deserve

our profound thanks for their commitment and leadership in the daunting task of caring for an increasingly fragile and medically complex patient population.

In the past few years, a wave of new owners and investors has begun purchasing nursing home chains – both large and small – successful and unsuccessful. These firms are private, unregulated, and new to the nursing home market. Many worry that the top priority for these new owners will be profits, rather than providing the staffing and resources necessary to ensure top quality care for our loved ones. Frequently, they use complex corporate structures, separating the nursing home real estate from the operating companies and putting multiple layers of limited liability partnerships between themselves and the day-to-day operations of the nursing home.

The impact of these new owners on the quality of care and safety of nursing home residents is still unclear. Some companies re-invest their profits into the facilities and focus on quality patient care. Others, unfortunately, skim off the profits to line the pockets of investors or plow the money into separate ventures that have nothing to do with nursing home care. What is certain, however, is that CMS and the states lack the tools to keep up with the rapid changes in the industry -- to know who actually owns the country's nursing homes and who should be held accountable for the residents in their care. When Congress passed the OBRA 87 safeguards, the typical nursing home was owned by a sole proprietor or family, and not part of a chain. Now, over 50% of nursing homes are part of a chain, and many of those are in the hands of private equity investors. Chain ownership has the potential to improve quality of care by allowing the sharing of resources and expertise across facilities. At the same time, chains have the potential to hide common problems and obscure responsibility for inadequate care. The Centers for Medicare and Medicaid Services needs to weigh these concerns to a greater degree in its enforcement.

Today's hearing will examine the challenges posed for the federal, state and local government, individual families, resident advocates, family members, and the industry as the face of nursing home ownership rapidly changes. We will hear from witnesses reflecting a variety of perspectives, including government leaders, academic experts, industry leaders and organized labor representing nursing home workers, and the Centers for Medicare and Medicaid Services. We will also hear an example of a troubled nursing home chain in New England, whose homes have been fined more than 45 times in the last 3 years for patient care problems that have had tragic results, such as organ failure, amputation of limbs, paralysis, and death. The chain is now in bankruptcy, and on the brink of sale to a private equity firm. Clearly this example is the exception rather than the rule when it comes to nursing home care. Our goal is to be sure that these such examples become more and more rare or disappear altogether.

I look forward to hearing from our witnesses today. We owe this hearing to the nursing home industry, the nursing home employees and to nursing home residents to ensure that Congress is doing all we can to see that federal nursing home regulations are adequate.