

**Testimony of Lee Bitler,
Director of Human Resources
Country Meadows
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Senate Committee on Aging**

My name is Lee Bitler and I am the Director of Human Resources for Country Meadows Corporation in Hershey, Pennsylvania. Country Meadows owns and operates nursing homes and assisted living residences in towns and cities across the state. We have 21 facilities, housing approximately 3,000 residents, and employ 1,585 people. I appreciate the opportunity to come before you today to speak on a very important topic, and relate my experiences with the criminal history and abuse prevention requirements in Pennsylvania.

On behalf of America's long term care providers, we support a national criminal background check system for prospective long term care employees. We have developed a three-pronged approach that will advance us on this course.

First, it is essential that Congress nationalize the nurse aide registries that contain important background information on nurse assistants. Under the current system nurse assistants can move from state to state, and nursing facilities are without the benefit of being able to access other states' registries.

Second, we need in place an easy-to-use, one-stop shopping, national criminal background check system for prospective long term care employees.

And third, and perhaps most significantly, we have recognized that education and prevention are crucial.

In 1995, Pennsylvania passed a law requiring criminal history background clearance on all employees in specific long term care settings, including nursing homes, personal care homes, home health agencies, domiciliary care homes, and other in-home service settings. This law applied to every employee, including those on contract, and prohibits the employment of individuals with specific criminal convictions from being employed or continuing employment. In 1996, our state legislature re-visited the Act and added strengthening amendments and increased its applicability. The amendments removed a provision allowing employment if certain convictions were more than ten years old, thus, prohibiting employment of persons convicted of crimes from ever working in long term care.

Additionally, two companion acts were signed into law that are designed to eliminate resident abuse through education and mandate reporting of abuse. Act 13 of 1996 requires all staff to report incidents of abuse and suspected abuse to protective service agencies and to law enforcement agencies when the resident has been physically harmed. This law establishes very specific follow-up procedures and stiff penalties for failure to make the mandated reports. Act 14 requires a criminal history background clearance on nurse aide training candidates prior to enrollment in a training program. This Act also expands the curriculum for the training programs to include a course of study on resident abuse detection and prevention. Each of these proposals is being implemented through Pennsylvania's regulatory review process now, and training programs have been teaching these techniques since May of 1998.

Pennsylvania's system presents numerous challenges to providers. With Pennsylvania's unemployment rate at an all-time low, providers are struggling to staff facilities. Add on a slow-response clearance process, and our difficulties are increased, particularly when an employee must enroll in a training

program. Pennsylvania's law requires a Pennsylvania state police clearance on applicants who have been a resident for at least 2 years, and an FBI clearance on those who have not been a resident for two years. The turnaround time for a state police clearance is approximately 30 to 45 days, and an FBI check takes 45 to 90 days. Very few applicants are willing to wait to start training and begin work. A national system must turn-around requests for clearance in less than a week in order to be effective and workable for the industry.

Another difficulty created by Pennsylvania's system is the output. If a request to the Pennsylvania state police uncovers a "hit" or a criminal record, the state police send the requester an actual "rap-sheet". Nursing Home and Personal Care Administrators and Human Resources Directors are then forced to interpret these often incomplete rap-sheets to determine whether the individual can be hired or retained. I have attached a list of the crimes that prohibit employment. We have no argument with the selected prohibitive crimes, but it is extremely difficult to distinguish by reading the rap-sheets, whether an employee has been convicted of a barrier crime. I would recommend a national system that responds to an administrator's request for a clearance with a simple yes or no answer, and leave interpretation of criminal records up to the experts.

Pennsylvania's law makes no mention of unemployment compensation, if an employee is dismissed because of a criminal record. Our law is being tested now in the courts by employees who have been dismissed. The facility is caught squarely in the middle and may be forced to bear the costs of unemployment compensation for an employment decision that is clearly out of their hands. I would recommend that the national system operate between the employee and the clearance agency, and leave facilities out of the decision process.

Lastly, I would strongly recommend that a national system take precedence over any inconsistent state laws. By having differing systems in many states, people with criminal records will continue to slip through the cracks. Companies working in many states will be better able to assure compliance.

The American Health Care Association (AHCA) has joined with the National Association of Attorneys General (NAAG) and have developed a unique partnership that teams the long term care industry with law enforcement on a national level. Our goal has been to work together to develop a system that will effectively weed out potentially abusive employees, while at the same time recognizing the staffing obstacles nursing facilities face.

In May of last year, in Boston, former president of NAAG, Attorney General Scott Hashbarger, convened at Elder Summit. At that meeting, AHCA and NAAG announced that they would work together to find a solution. Since that time these partners have worked closely with the Senate Aging Committee (in particular Senators Grassley, Kohl and Reid) to identify and propose solutions to contentious issues that surround the criminal background check issue. The partnership is a work in progress. And because the challenge before us is complex, we welcome the participation of interested parties to constructively address the issues we face in pursuit of this goal.

Let me outline for you the principles agreed to by AHCA and NAAG in pursuit of this legislation. We support the following:

- Law enforcement, local and federal government, and the long term care profession will work in a partnership towards reducing and eliminating incidences of abuse and neglect in our nation's long term care system.
- Nursing facilities and other long term care providers should have the ability to conduct criminal

background checks and access a national nurse aide registry through an efficient, one-stop-shopping, and inexpensive national criminal background check system that returns results within 24 hours.

- All states should have access to the successful and effective "Patient Abuse Pre Initiative."

Our partnership has also identified some problem areas where we need more input from interested parties. The following are examples of unresolved concerns:

- Are only non-licensed facility employees subject to the checks? Some state licensing boards may oppose doctors or nurses being subjected to the checks. Conversely, groups representing nurse aides or other long term care employees might resent being singled out.
- What are the liability issues for facilities that fail to use the system? Or that fail to use it correctly?
- How will the federal system integrate with existing state criminal background check requirements?
- Will the technology exist for us to reasonably expect that national criminal background checks can be conducted in a prompt and inexpensive manner? For this system to work, we need one-stop shopping and we need the information quick. Otherwise, we will end up with more staffing shortages, putting more pressure on existing staff. Waiting 45 to 90 days for clearance from the FBI, which is our system in Pennsylvania, has created problems already. We are unable to enroll nurse aides in training without the clearance, and potential employees cannot wait that long to start work.
- Will there be mitigating circumstances for certain types of crimes and prospective employees? If someone has a 20 year old drug conviction on their record, but has had a clean slate since then, is that person barred from working in our facilities?
- Are there privacy issues that could prevent an early and swift implementation of the system?

These are but a few of the issues we have encountered as we move toward developing legislation. Both law enforcement and the industry are committed to this effort, but even within the partnership, we sometimes approach the issues from different angles. We are not intimidated by that, and on many of the issues we are in agreement. What we are committed to is trying to find answers to these questions -- and finding them soon.

I hope this hearing and the Senate Aging Committee's focus will yield serious and thoughtful deliberation on how we can best equip our nation's facilities with the tools needed to maintain quality staffing. With the leadership of Senators Kohl and Reid, I am confident that Congress will continue to work with law enforcement and long term care providers to meet the challenges that confront those who are for America's seniors.

We are an industry that has undertaken the huge responsibility of caring for our most vulnerable citizens. We cherish that awesome responsibility and will continue to work tirelessly to improve upon the delivery of quality services. Mr. Chairman, we are already a part of finding the solution and hope that you and this Caucus will join us in our efforts.

Thank you, Mr. Chairman.