

Statement of

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I am a state regulator. As you know, to the extent that the assisted living industry is regulated at all, it is regulated by state agencies such as the one I work for. My counterparts in other states and I have been given the task of devising regulatory approaches to this industry. In doing so, we face conflicting demands. We are told we must establish high standards for quality of care and quality of life-- but we must not drive the cost of services beyond an affordable range. We are told we must encourage providers to offer alternatives to nursing home care-- but without running local nursing homes out of business. We are told we must promote autonomy and independence for residents-- but keep them safe from abuse and neglect. We are told we must inspire public confidence by inspecting facilities frequently and thoroughly-- but keep regulatory program costs down.

The assisted living industry has recently been the focus of urgent regulatory scrutiny by the states. According to the National Academy of State Health Policy, at least 32 states have, within the past two years, enacted new legislation governing assisted living facilities. I recently polled my colleagues, and, out of 26 states responding, 20 say they are currently considering changes to assisted living regulations or laws. Clearly, assisted living is a hot issue in many, many states.

State agencies face two major challenges in developing a regulatory approach to the assisted living industry. The first is that we have too few resources. For many state regulatory agency directors, the assisted living program is a significant source of anxiety. What would make us better able to sleep through the night would be a sense that assisted living facilities are being inspected often enough to make it unlikely for serious neglect and abuse of vulnerable residents to be undetected for very long.

Unfortunately, not many of us believe that is the case in our respective states. Most states simply don't have enough assisted living surveyors and don't have the money to hire more. I venture to say my state is not atypical: we spend about \$5.5 million each year in our nursing home regulatory program, which covers 244 facilities. Meeting our workload requirements in that program is a constant struggle and we often miss the mark. But in our assisted living program, which covers 309 facilities, we are only spending about \$500,000 during the current fiscal year.

There is another difficult challenge confronting state agencies. In our nursing home regulatory program, my state and all other states rely on a well-established corpus of national standards when making compliance decisions. There may be controversy over the survey and enforcement methodology used in the federal nursing home program, but I have yet to hear a serious argument from providers, consumers, or regulators that the federal nursing home standards ought to be changed in a significant way.

When it comes to the assisted living industry, though, there is no consensus on what regulatory standards ought to apply. We state agencies have been left to our own devices. This necessarily means that there are today as many regulatory approaches to the assisted living industry as there are states involved in regulation. Should a state agency employee attempt to write new assisted living standards, he or she might look to other states for guidance, but in doing so would face a bewildering array of choices. For example, states do not agree about who may be appropriately

admitted to assisted living facilities, who ought to determine who may be admitted to assisted living facilities, who can do what to residents who are admitted to assisted living facilities, nor do we even agree about what an assisted living facility is. How can a state agency director have confidence that any regulatory approach adequately addresses the many risks faced by assisted living residents?

The Assisted Living Work Group will be valuable to state agencies because it brings together a wide variety of people and organizations from around the country who come to the table not only with expertise but with new perspectives on various issues. In their individual regulatory deliberations, state agency personnel are not often exposed to such an extensive range of viewpoints.

To the extent that the Assisted Living Work Group can achieve consensus around issues faced by the states, it will set useful benchmarks by which we may measure ourselves. It may also help us bring resolution to some thorny questions.

The Assisted Living Work Group can also help state agency staff in thinking through complex regulatory issues. Even if there are issues on which the Work Group will be unable to achieve consensus, there will still be value if the final report includes discussion of the considerations that might inform a state's own decision-making. I'll say it another way. There will be a benefit if we can achieve a national consensus on, for example, a definition of assisted living. But there will be yet more benefits if we can describe how the definition was derived, if we can explicitly state the questions that the definition is designed to answer, if we set out alternative definitions that were not adopted, and if we can explain why they were not.

My own participation on the Work Group has been rewarding to me and will be an enormous help as we grapple with assisted living issues in my state. I look forward to the opportunity to share my experiences on the Work Group with colleagues from around the country.

I look forward even more to the final report of the Work Group. I believe it will be a valuable tool for all the states currently updating their regulatory systems, and for all those who will do so in the future. For that reason, Mr. Chairman and members of the Committee, I thank you on my own behalf and on behalf of state survey agency directors around the country for your work, and the work of your staff, in creating the Assisted Living Work Group.