



Testimony of

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On behalf of the
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“Assisted Living: Examining the Assisted Living Workgroup Final Report”

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Good morning, Chairman Craig, Senator Breaux, and members of the Committee. My name is Dan Madsen and I am President and Chief Executive Officer of Leisure Care, Inc. Leisure Care is a privately owned family business headquartered in Bellevue, Washington. We currently manage 33 retirement communities and assisted living residences in 9 western states housing over 4,700 residents. Since 1976, Leisure Care has grown from managing just one community to become the 4th largest privately owned assisted living company in the country. We plan to expand into other states in the future

I am here today on behalf of the American Seniors Housing Association (ASHA) which represents the interests of over 250 companies involved in the management, ownership, financing and development of seniors housing. ASHA’s members currently house over 500,000 seniors nationwide in settings that include assisted living and Alzheimer’s residences, independent living communities, senior apartments, and continuing care retirement communities. The Association was proud to have been asked by this committee to participate in the Assisted Living Workgroup – the topic we are here to discuss today. ASHA’s approach, from the outset of this process, has been to work in a consultative manner with our colleagues on the Workgroup in order to balance our residents’ strong desire for choices, options, and quality in the provision of seniors housing services with the requisite level of regulation needed to assure that only high quality, service oriented providers thrive in the marketplace. As a member of the Assisted Living Workgroup’s Steering Committee, ASHA and its members are committed to improving quality in assisted living residences nationwide and we feel that the Assisted Living Workgroup Report – ***Assuring***

Quality in Assisted Living: Guidelines for State Regulations, Federal Policy, and Operational Models – provides information that will be helpful to consumers, operators and state policymakers in promoting quality in assisted living.

The Assisted Living Workgroup

The most positive aspect of the Assisted Living Workgroup has been the opportunity for interaction between organizations and people from all sides of the assisted living spectrum. Perhaps for the first time in one room at the same time, the interests of consumers and family members, assisted living providers, state regulators, and other professionals were represented. For over 18 months, as many as 50 organizations researched, debated and reached consensus on over 100 recommendations to states and assisted living operators on how to promote quality on such vitally important topics as resident rights, medication management, activities, and Alzheimer’s and dementia care.

The spirited debate and interaction between such a diverse group of people that occurred at the monthly meetings of the full Assisted Living Workgroup, as well the more frequent topic group meetings, will lead to more communication, better policy and in turn, improved quality for assisted living residents. It has been a tremendously healthy dialogue. Our participation in the Assisted Living Workgroup reaffirmed the need for providers to have a dialogue with consumers in order to serve them better. While not all of the groups involved in the Assisted Living Workgroup agreed all the time on every recommendation in the report, the spirit of consensus and coalition building will help state policy makers understand what issues are the most important when they examine and revise their current regulatory schemes for assisted living.

In the end, while the Report produced by the Assisted Living Workgroup is not perfect, the process used to bring all the relevant stakeholders together was a positive experience and will only help improve communication between assisted living consumers and operators. As you are well aware, the history of healthcare regulation in this country too often reflects an “us against them” mentality. ASHA commends our colleagues on the Workgroup for their vigorous efforts to find common ground and also ground our disagreements in respectful divergences of opinion. We will continue to work with policymaking bodies in this spirit in the future. Mr. Chairman, we commend you and Senator Breaux for your leadership on this issue.

Quality for Each and Every Resident

I started in the business of caring for older people in 1988 as a property manager for Leisure Care at Cottonwood Creek located in Salt Lake City, UT. That experience, as well as my continued work with Leisure Care over the years and now as President and CEO, has taught me that assisted living quality starts not at the state level or even the property level for that matter. It begins with understanding the individual needs of every single resident. In addition to the duties I have running Leisure Care as President and CEO, I still personally oversee two communities in Tucson, AZ as Operations Manager, which allows me to stay close to the day-to-day business of caring for our residents. This also allows me to communicate directly with residents, their families and our employees.

As a member of ASHA's Executive Board and its Assisted Living Workgroup Task Force, Leisure Care assisted Association staff in reviewing, editing and perfecting Workgroup recommendations as they were developed here in Washington, DC. This Task Force was comprised of a number of talented professionals from a diverse range of assisted living companies – including Emeritus Assisted Living, Brookdale Living Communities, Hearthstone Assisted Living, LifeTrust America and Marriott Senior Living Services. We were able to objectively review the recommendations to determine if they would be effective in promoting quality for our residents.

Did we agree 100 percent with all the recommendations? Of course not. On some occasions the ASHA Task Force felt that a certain recommendation would not have an impact on quality or would dramatically alter the way that assisted living services are provided. We also carefully took into account the effect that some recommendations would have on accessibility of assisted living to low and moderate-income individuals. If the impact on quality was negligible, but implementation of the recommendation would result in a significant increase in costs to residents, ASHA's Task Force opted to vote against the recommendation. It is true that many things should be done regardless of cost (i.e. adherence to building and life safety codes, providing a secure environment for residents with Alzheimer's disease or dementia). Nonetheless, we must note that some of the recommendations included in the Assisted Living Workgroup Report did not meet a reasonable cost-effectiveness standard and ASHA joined other groups in opposing them. A good example of this is a recommendation from the Direct Care Topic Group that would have required assisted living operators to contract with a number of external professional consultants such as medical directors, clinical social workers, and activity consultants. ASHA feels that the specific assisted living residence should determine whether contracting with certain professionals would impact the quality

of care its residents receive. It would be cost prohibitive, unnecessary and duplicative, for instance, for an assisted living residence to employ a medical director when residents are under the care of their own primary care physicians.

We also voted against some recommendations that appeared to micro-manage administrative procedures of assisted living operations that really did not have a direct impact on quality. For instance, a recommendation from the Staffing Topic Group included a 23-point checklist for the training curriculum of personal care assistants. We felt that this recommendation was overly prescriptive. And finally, we voted against some recommendations because we simply did not feel that they were consistent with what ASHA's members believe to be vital issues related to quality. The best example of this is ASHA's opposition to the language included in Part B of the definition requiring assisted living operators to only offer private, single occupancy apartments. Many of ASHA's members offer shared-room environments for residents who either choose to share because of a desire not to live alone, or because they simply would not be able to afford assisted living were they required to live in a private apartment. Requiring operators to only offer private apartments would (1) significantly limit accessibility to assisted living for moderate and lower income individuals, (2) undermine consumer choice and affordability, (3) be cost-prohibitive for many providers of assisted living and (4) would in the end have very little impact on quality.

As with any process involving as many as 50 organizations, disagreements occurred and occasionally consensus was not achieved. That being said, ASHA and its members feel that the majority of the recommendations included in the final Assisted Living Workgroup Report will indeed help assisted living providers across the country identify areas that need to be considered when they address quality within their residences. In the end, ASHA voted for more than 100 of the 127 recommendations included in the report. The assisted living industry has changed a great deal over the past 15 years and is continuously striving to improve the quality of care provided to its residents. It is still evolving and I suspect that it will change as much in the next 15 years as it has since I first began my career at Cottonwood Creek in 1988. The Assisted Living Workgroup Report is an important Mile Marker along that road.

State Oversight of a Growing Industry

The Assisted Living Workgroup did not operate in a vacuum. Over the past 10 years, states have been aggressively monitoring and licensing assisted living providers and have regularly updated and modified their regulation of assisted living. As the assisted living industry grew dramatically in the mid-to-late 1990s, state governments took the lead in setting forth guidelines for assisted living operators to protect

their senior populations. Since 1997, ASHA has published the *Seniors Housing State Regulatory Handbook*, a reference guide providing information on assisted living regulations in all 50 states and the District of Columbia. During this period, 49 of the 50 states and the District of Columbia have made significant changes and updates to their regulation of assisted living – many more than once. More than just technical changes to regulatory jargon, these updates have remained flexible enough to allow assisted living operators to adapt and innovate, while at the same time have provided meaningful oversight of an industry caring for a population whose average resident is over 80 years old.

According to the National Academy for State Health Policy in its most recent review of assisted living (*State Assisted Living Policy: 2002*, November 2002), between 2000 and 2002 legislative and executive branch activity occurred in nearly every state and at any given time, more than half the states were working with a task force to develop and/or revise assisted living regulations. The review also states that more than half the states are currently reviewing assisted living regulations. The same NASHP report highlights an important trend in assisted living oversight – the specific regulation of assisted living providers who provide care and services to residents with Alzheimer’s disease or related dementia. Currently, 36 states have Alzheimer’s-specific provisions in assisted living regulation for such residences. Other important areas that states are focusing on include defining assisted living, medication management, admission and retention criteria, resident agreements, staffing and staff training, activities, quality assurance and public financing for low-income residents. The very same topics addressed by the Assisted Living Workgroup.

State legislatures are also involved in a significant way. In fact, since the start of the 2003 legislative sessions, 30 states have at least one bill introduced in their state legislatures pertaining to assisted living. These bills concern a wide-variety of topics that were discussed at the Assisted Living Workgroup including, administrator training, background checks for employees, hospice services, consumer disclosure and resident agreements.

States and localities are best able to regulate assisted living and they are working to do so. ASHA and its members support the aggressive enforcement of state regulation and in the rare occasions where persistent and serious quality-of-care problems arise, we urge states to exercise their existing authority to put the few “bad apples” out of business.

The presence of state regulators at the Assisted Living Workgroup table was a significant benefit to the assisted living industry. We hope that in the years ahead, as states continue to monitor and, where

appropriate, make more changes to their laws and regulations, that they will implement a process that involves a wide variety of stakeholders to offer input, as this Committee has done with the Assisted Living Workgroup. Using the Assisted Living Workgroup Report as a reference guide to issues that should be considered, states can create “state-based ALWs” that will help assure quality in assisted living across the country. As I stated before, assisted living quality is a community-by-community, resident-by-resident endeavor. Assisted living residents and their family members are best served by state- and local-based regulations that can truly meet the unique needs of the residents and culture of a certain state.

Leisure Care operates in nine states, and while the core of what is required is very similar in those states – and indeed what is provided in our buildings is as well -- it is the variation of assisted living regulations between states that allows assisted living to be able to best meet the needs of its residents. Residents living in our assisted living community in Idaho Falls, Idaho have many of the same needs that the residents of our communities in Beaverton, Oregon and Rio Rancho, New Mexico, but they also have a unique culture and way of life. For instance, Leisure Care offers regional menus for all of our dining services. Residents typically move-in to assisted living located within the communities in which they were born and raised. Their culture and tastes move-in with them. The residents in our community in Oceanside, California outside San Diego particularly enjoy fresh Mahi Mahi and roasted vegetables for dinner. If we tried to serve fresh Mahi Mahi to a resident in Great Falls, Montana, I am not sure that it would go over quite so well! Another example would be the staffing patterns we employ on Sundays. Again, different cultures and values determine how we provide services to our residents. Residents in our Los Angeles community expect fully-staffed activities to occur seven days a week, while the residents of our Idaho Falls community have actually requested that we allow our employees to stay home with their families on Sunday and only staff a skeleton crew those days. This regional flexibility would not be possible with a national standard.

An Industry Committed to Quality and Consumer Education

When Senators Breaux and Craig created the Assisted Living Workgroup in 2001, ASHA and the assisted living industry embraced the idea because we are committed to quality and customer education, service and choice. The ability to engage in discussions on important topics with consumer advocates and state regulators was an opportunity that will help the industry to better serve its population of over 700,000 seniors nationwide. As the assisted living industry evolves and changes over the next decade, ASHA and its members will remain committed to continuing to educate the public about assisted living. An educated consumer is better able to make decisions either for themselves or their loved ones as to what setting is most appropriate and will best meet their needs. Our efforts in consumer education began in earnest in the mid-

1990s when a collaborative effort, initiated in 1995, between ASHA and the American Bar Association's Section of Real Property Probate and Trust Law, Committee on Housing for the Elderly, resulted in the publication of a model *Retirement Community Admission Agreement*. This guide was prepared for attorneys and consumers to help identify issues that should be addressed and options to be considered in admission contracts. Thousands of copies of this publication have been distributed to consumers and their legal advisors in the past eight years.

In 1997, ASHA created a brochure entitled "*Assisted Living Residency Agreements, Key Points to Consider when Choosing a New Home*." This consumer-friendly brochure provides consumers and their families with two-dozen critical questions that should be asked of prospective assisted living providers with respect to services and care; payment and pricing; and other important considerations. To date, more than 50,000 of these brochures have been distributed free-of-charge by ASHA members to prospective residents and their families.

Prior to this Committee's first hearing on assisted living in 1999, ASHA published and distributed to its members an *Assisted Living Consumer Information Statement*. This three-page form serves as a general guide for assisted living consumers and their family members about the care and services provided in different assisted living settings. It provides consumers with uniform information on resident fees and services; move-out and discharge criteria; staffing; and safety features. This brochure allows prospective assisted living residents to easily compare one residence to another in order to help make the most informed decision about which assisted living residence will best meet their needs. Copies of the *Assisted Living Consumer Information Statement* have been distributed to over 5,000 assisted living communities, and remain available to the general public on the ASHA website at no cost.

Most recently ASHA, in conjunction with ASHA Executive Board member Freddie Mac, produced and distributed over 100,000 copies of our brochure entitled, *Housing Options For Seniors* – a brochure describing the different types of seniors housing communities available from coast to coast. Finally, ASHA will soon launch a revised website – www.seniorshousing.org -- that will include a special Consumer Information Section with links to consumer organizations and free-of-charge electronic versions of all the consumer information I just described.

But it is not just ASHA who is educating the consumer about assisted living. A simple search on Yahoo for "assisted living" netted over 800,000 hits. Included in those results are sites such as

www.seniorhousing.net, a website that allows consumers and family members to search for an assisted living residence in the same way that many people search for apartments and single-family homes online. Similarly, the Administration on Aging sponsors a website (www.eldercare.gov) and toll-free phone referral service to assist the nation's seniors find appropriate settings in which to live – including assisted living. Such an online system was very limited when the Aging Committee first started addressing assisted living in 1999. Other groups involved in the Assisted Living Workgroup also have done significant work in educating the public about what assisted living is all about:

- The National Center for Assisted Living has published an excellent guide online entitled: *A Consumer's Guide to Assisted Living and Residential Care* available at www.ncal.org.
- AARP has made assisted living a major part of its “Life Answers” program, which provides an opportunity for consumers to call a toll-free number to help answer questions, find a residence nearby or simply talk with a trained consultant about aging issues.
- The American Association of Homes and Services for the Aging has developed an important consumer brochure entitled “Exploring Care Options for Relatives with Alzheimer’s Disease” that it distributes on its website (www.aahsa.org) that receives over 10,000 hits per week.
- The Consumer Consortium on Assisted Living has developed a comprehensive checklist that consumers can use to ask the right questions when visiting assisted living residences in order to determine the best possible setting for themselves or their loved one.

Important Next Steps

We urge this Committee to continue its commitment to improving the quality of life for America’s seniors and particularly encourage you to examine one item that is not covered in the Assisted Living Workgroup Report – the cost of financing needed long-term care services. Quality long-term care does not come cheap. Most American’s are woefully unprepared financially if and when they require assistance with the activities of everyday life. We encourage this Committee to continue efforts to educate the American people on the pressing need to be prepared and encourage you to examine legislation like that introduced in the past by Senators Grassley (R-IA) and Graham (D-FL) that would encourage long-term care insurance coverage. We are pleased that President Bush supports similar proposals and ASHA encourages your continued efforts in that regard. Leisure Care, Inc. offers long-term care insurance free of charge to all 2,000+ our employees. We also offer subsidized access to a preferred long-term care insurance plan to the employee dependents and families (including grandparents).

ASHA does not view today as an end to the Assisted Living Workgroup process, but rather as a beginning. To that end, we will make the Assisted Living Workgroup Report available to every one of our members and encourage them to use it when evaluating their own operations. I would venture to say that a great many of the recommendations are already being put into place by ASHA's members, but where process and procedure can be changed to improve quality, ASHA members should do so with or without the presence of state regulation. An example would be the recommendation that would require assisted living operators to allow their residents to form resident councils – a practice that Leisure Care has followed since its inception. The ability of residents to meet independently allows for greater input into community operations – improving quality and resident choice and autonomy at the same time. There are other recommendations in the Assisted Living Workgroup Report like this one that can be implemented at little or no cost to assisted living providers that will improve quality today. So, ASHA will stress the importance of the Assisted Living Workgroup process and Report to each and every ASHA member.

We will continue to seek collaboration with consumer organizations such as AARP, the Alzheimer's Association and the Consumer Consortium on Assisted Living both here in Washington, DC and in the states to help ensure that the views of consumers and family members are heard by our members and that the highest level of quality in assisted living can be achieved in every residence. The relationships that were built around the Assisted Living Workgroup table will not be abandoned and allowed to fade away. We will continue to work hand-in-hand with consumer organizations and state regulators whenever and wherever possible.

We will encourage state regulators to solicit the input of assisted living consumers and providers when they address changes in their current regulatory schemes and to use the Assisted Living Workgroup Report as an important reference guide to issues that should be considered in any oversight structure of assisted living.

In conclusion, I would like to thank Senators Craig, Breaux and the entire Committee for the opportunity not only to speak to you today, but for your continued efforts on behalf America's seniors. Rest assured, ASHA and its members share the Committee's commitment to improving the lives of our assisted living residents.