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On "In the Hands of Strangers: Are Nursing Home Safeguards Working?"
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Chairman Stupak, Ranking Member Shimkus and honorable members of the Subcommittee, I thank you for the opportunity to testify before you today. I am the President of SEIU Healthcare Pennsylvania (District 1199P), the state's largest and fastest-growing union of health care workers, representing more than 22,000 employees in hospitals, nursing homes, home care, and state facilities. I am also an elected SEIU Vice-President and serve on our International Executive Board. I am here today speaking on behalf of SEIU's 1.9 million members, including 150,000 nursing home workers.

Nearly 35 years ago, I began my working life as a nursing assistant in a large public nursing home. Even today, I can remember my first day on the job, the challenge of providing quality, compassionate care and support for the frail elderly residents entrusted to me. Dealing with my own fears and emotions in order to stay focused on maintaining and enhancing their dignity and independence as I did my work. I remember the long shifts, weekends, mandatory overtime, and the constant back breaking lifting. But, most of all, I remember the people, the residents that I had the opportunity to meet and to work with, their personalities, their stories, their challenges, and their important medical and emotional victories and devastating defeats. I grew to love my work and the special people I worked with.

For the last 27 years I have worked hard to build my Union, to create a critical voice for long term care workers, and as a powerful advocate for improving the quality and standards of care for the elderly and frail that must rely on us in their times of need. I have worked with, and I have fought with large public "non-profit" authorities, important government agencies, and the nation's largest and most powerful "for profit" nursing home chains. I have seen a great deal of progress over that time. But, I am here today out of great concern about our ability to continue that progress.

A new player has entered the nursing home world--private equity firms. SEIU is deeply concerned that the private equity business model, which seeks to make extreme profit, will operate at the expense of nursing home residents, their families, caregivers, and taxpayers. Unlike publicly traded companies that are subject to federal securities laws and regulations as well as to daily scrutiny by financial analysts and the business media, private equity firms operate virtually free of oversight and public accountability, their profits and practices largely hidden from view. This lack of transparency is built into their business model, providing buyout firms with certain advantages that publicly traded companies do not enjoy. Buyout firms operate behind a veil of secrecy that allows them to conceal virtually all aspects of their business from regulators, affected stakeholders, the general public, and their competitors.

Others have testified today and at other Congressional hearings about the tragedies that occur too often in nursing homes. These tragedies will only continue because federal laws and regulations have failed to keep pace with trends in nursing home ownership and financing, which are placing many homes in a financial jeopardy while making it increasingly difficult to hold them accountable for patient care problems. The industry has moved towards increasingly complex corporate structures and highly leveraged buyouts. For example, last winter, the Carlyle Group, one of the world's largest private equity buyout firms, completed a $6.6 billion leveraged buyout of HCR Manor Care, the nation's largest nursing home care provider. This buyout rightfully raised serious concerns for nursing home staff trying to provide quality care; for state surveyors whose job it is to provide ongoing oversight; for the taxpayers who fund the bulk of this care and; most importantly, for the residents who could suffer if Manor Care's billions in buyout debt affect quality of care. It remains unclear how Carlyle/Manor Care will service such high debt without some effect on care. Plain common sense suggests that there is reason to be worried about cost-cutting pressure at a company that has just taken on up to $5.5 billion in new debt. SEIU estimates that the new interest expense alone in just the first year after the Carlyle takeover could be up to $400 million. This figure, which does not even include the increase in principal payments, is already more than double Manor Care's entire profit of $167 million in 2006.[1] How will this massive new expense be paid for? Are we really to believe Carlyle's investment plan for Manor Care is to drive a profitable company deeply into the red, and not cut costs—of which staffing is one of the largest-- to keep its investment profitable?

A significant body of research suggests staffing levels are the best measure of quality of nursing home care and the GAO has reported that many nursing homes are understaffed. So there is a real concern that nursing homes involved in highly leveraged buyouts will further cut staffing to pay off debt—at the cost of resident care. This raises concern both about the safety of residents and about the value taxpayers are getting for Medicare and Medicaid dollars.

In addition to the concern of inadequate staffing, there is a fundamental lack of transparency in the nursing home industry. According to a September 23, 2007 New York Times expose, "Byzantine" structures such as those employed by private equity and large chains have frustrated the efforts of state regulators to hold long term care facilities accountable for the quality of care they provide. Nursing homes today employ ownership structures that obscure who is actually responsible for decisions that impact the quality of care in the facility. These buyout firms set up layered entities—sometimes there are hundreds of entities involved--to run their nursing homes and avoid liability, often separating the real estate asset holdings from the operations. A typical model may include one special purpose LLCs to hold a facility's license, another LLC to hold the real estate and tangible assets, and contracts with management companies to run the facility's day to day operations.

Such diffuse structures become even more complex when employed by large chains, which may create multiple layers of corporate shields that stand between the ultimate parent company and

[1] Manor Care's reported net income in 2006 was $167,084,000. Manor Care, Inc., Schedule 10-K for Fiscal Year ended 12/31/06, p. 45.

the facility-level LLCs. Nursing home chains have used such structures in the past to frustrate efforts by regulators and plaintiffs to hold parent companies accountable for the care provided in their facilities, and to obscure transactions and self-dealing between related parties. CMS has previously testified that they do not know who owns all nursing homes in this country. This despite the fact that the nursing home industry receives $75 billion a year from Medicare and Medicaid. How can Congress accept that we are paying Medicare and Medicaid dollars to homes where we don't know who is responsible?

Twenty years ago, it was at the urging of courageous reformers like Chairman Dingell and Pennsylvania's Republican Senator, the late John Heinz III, that Congress passed landmark nursing home reform legislation. The real question before you is whether Congress will show the political courage today to once again pass significant nursing home reform. In February, Senators Grassley and Kohl introduced the bipartisan bill, S2641, the Nursing Home Transparency & Improvement Act. And Representatives Stark and Schakowsky have indicated that they will introduce similar legislation soon.

This no-cost bill will increase transparency and promote accountability of nursing home owners and operators, particularly nursing home chains, by requiring companies to disclose fully the corporate entities that own nursing homes and the affiliated entities that operate them or have other financial or operational relationships. By requiring all nursing homes to report their nurse staffing levels and turnover and retention patterns and to clearly show how Medicare dollars are being spent, including expenditures for nursing staff, the bill will provide American families and policymakers critical information in evaluating the quality of care at the nation's nursing homes. Similarly, by creating a national independent monitor program to look closely at the performance of nursing home chains, the bill will make it easier for CMS to identify irresponsible corporations that operate in more than one state.

This bill has been endorsed by the AARP, the Alzheimer's Association, the National Association of State Long-Term Care Ombudsman Programs, and the Leadership Council of Aging Organizations. Congress will likely pass a Medicare bill this year—the Senate is currently negotiating legislation--which means there is an opportunity to attach S2641—a no-cost bill. I invite the industry to work with us to pass S2641 the Nursing Home Transparency & Improvement Act. We commend many in the industry who have recognized the need for greater transparency. However, the for-profit industry appears to be blocking this legislation. We stand ready to work with them. But if they choose to continue lobbying against this bill, then I urge Congress to stand up with us, and with the vulnerable seniors who count on their Members of Congress to represent THEIR interests. Hearings are not enough. Your constituents want you to take real action, and not simply talk about the problem.

Taxpayers trust that Medicare and Medicaid dollars will go toward providing seniors and the disabled with the quality care they deserve and will not become profit at the expense of nursing home residents, their families, caregivers, and taxpayers. Congress must exercise its oversight authority to ensure that Medicare and Medicaid dollars are spent as intended—to provide high quality care. We must not fail to protect our seniors and we cannot allow the bad actors in the for-profit nursing home industry to continue to let our seniors down and block attempts to pass meaningful reform. With S2641 and the Stark-Schakowsky bill soon to be introduced, you have a great opportunity before you and we urge you to seize it.

I thank you for inviting me here to testify.