



FOCUS

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JULY 2008

Vol. 14 No. 7

Providers Defend Use Of Pre-Dispute Arbitration Clause

Witnesses testifying on behalf of AHCA/NCAL told federal lawmakers that the Nursing Home Arbitration Act of 2008 discriminates against long term care providers and their residents.

Both the Senate and the House held hearings focusing on the “fairness” of pre-dispute arbitration clauses being included in admission agreements to assisted living communities and skilled nursing facilities. The House and Senate bills would eliminate the use of pre-dispute arbitration agreements between a long term care provider and a resident or anyone acting on the resident’s behalf.

AHCA/NCAL supports the use of arbitration agreements as a less adversarial and faster method of reaching a legal resolution. In 2002, AHCA/NCAL developed a model arbitration agreement form for possible use in admission agreements. The model form also provides a 30-day window that allows residents or their representatives to reconsider and, in writing, rescind the agreement.

“Like the vast majority of Americans, AHCA/NCAL believes that legislative proposals to limit arbitration and undermine the Federal Arbitration Act are bad public policy,” Gavin Gadberry, an attorney with Underwood, Wilson, Berry, Stein & Johnson, in Amarillo, Texas, told the House Judiciary Subcommittee on Commercial and Administrative Law during its June hearing.

Also in June, the Senate Committee on the Judiciary hosted a joint hearing between its subcommittee on Antitrust, Competition, and Consumer Rights and the Senate Special Committee on Aging. Sen. Herb Kohl (D-Wis.) presided.

Testifying on behalf of AHCA/NCAL was Kelly Rice-Schild, owner of The Floridean Nursing and Rehabilitation Center, located in Miami. Rice-Schild testified that excessive lawsuits filed

Arbitration, continued on page 2

NCAL Chair Recognized For Outstanding Federal Advocacy

AHCA and NCAL recognized NCAL Chair Howie Groff, president of Tealwood Care Centers, with its highest honor—the Joe Warner Patient Advocacy Award—during the 2008 Congressional Briefing held in Washington, D.C., last month.

Congressman Tim Walz (D-Minn.) presented the award to Groff, recalling how it was discovered that Walz’s mother works as a certified nurse assistant at a Tealwood facility.

The Joe Warner Award recognizes AHCA and NCAL members who are committed to educating members of Congress about issues that are important to the residents and patients in assisted living and skilled nursing facilities. Among Groff’s advocacy activities was inviting and then hosting Congressman Walz and his wife on a tour of a Tealwood facility.

“I am deeply honored to be a recipient of the Joe Warner Patient Advocacy Award,” said Groff. “This award represents the best opportunity available to NCAL members, and that is to meet with our federal lawmakers and advocate on behalf of our residents to ensure that federal policy improves their quality of life.”

Groff has been a long term care professional for almost 30 years. In 1989, he formed Tealwood Care Centers, located in Bloomington, Minn. Today, Tealwood offers a range of long term care services in more than 40 assisted living and skilled nursing facilities located in Iowa, Minnesota, Nebraska, and South Dakota.

In addition to his position as NCAL chair, Groff is a member of the Executive Committee of Care Providers of Minnesota.

The award is named after the late Joe Warner, who

Advocacy, continued on page 2

Inside Focus

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6. Clinical: Female Residents Need To Express Themselves Through Traditional Roles

7. Marketing: Assisted Living Move In: Why Are Customers Choosing Your Community



Assisted Living Workers Rise Above Hardships Of Iowa Floodwaters

When the Cedar River flooded more than 1,300 city blocks of Cedar Rapids, Iowa, in mid-June, it also knocked out three of the city's four well-water stations, forcing officials to ask citizens to conserve as much water as possible.

No one could flush toilets, take showers, or do laundry within the city limits. When Evergreen Estates house-keeping Supervisor Elaine Dunkel, who lives in the country, learned of the water emergency, she drove to the Cedar Rapids residential care facility where she works, piled loads of soiled laundry into her car, and returned home to do the community's wash in her own washing machine. Her home has its own water well.

Dunkel's story illustrates the commitment, dedication, and initiative that ensured more than 100 seniors were cared for during the worst flooding Cedar Rapids has ever seen.

Evergreen Estates has three residential care facilities located in the Northwest and Southwest sections of the city and serves about 115 seniors.

"Elaine did this without me even asking, nor would I have ever thought to ask," says owner-operator Pat Giorgio. "I can't say enough about my

staff. My employees have been phenomenal, and their generosity brings tears to my eyes.

"Everyone of my staff members showed up for work; that is the level of their commitment to these residents. No one called in and said they couldn't come in, despite their own hardships," says Giorgio. Some employees stayed with the residents and slept in the communities because they feared they would not be able to return if they left the communities, she said.

"One of my directors of nursing came to work after taking care of her mother, who had lost everything because the floodwater was up to the house's roof line," Giorgio says.

With the river cresting at 31 feet, most of the city's bridges and the main thoroughfare through the center of town were under water.

"Normally, it would take 15 minutes for some of my staff to commute to work, but with six of the city's seven bridges closed, many had to drive very circuitous routes that took some up to two hours to get to work," she says. "I am so proud and grateful to my staff. Everyone showed up. Imagine the hardships they had to go through."

Providers Defend Arbitration

Arbitration, continued from page 1

against long term care facilities have caused liability costs to skyrocket in states such as Arkansas, Florida, and Texas. During the 1990s, it became so expensive to operate in Florida that many long term care companies closed or divested themselves of facilities in the state, she said.

Today, Rice-Schild pays \$37,000 for a \$25,000 general and professional liability policy. In response to questions, Rice-Schild said it would cost \$800,000 for a \$1 million policy. She also said her facility uses arbitration clauses; the residents are not mandated to sign the arbitration agreement.

Testifying against the use of mandatory, pre-dispute arbitration agreements was Alison Hirschel of Michigan, president of NCCNHR: The National Consumer Voice of Quality Long Term Care. (NCCNHR is formerly the National Citizens' Coalition for Nursing Home Reform.)

Hirschel reported an incident about a 92-year-old Detroit woman with dementia who walked out of an unlicensed assisted living community in her pajamas in February and died.

After her death the family learned they had signed an admission agreement that contained a mandatory, binding arbitration provision. The arbitration agreement stipulated that the provider had the option to choose to resolve the dispute, the location of the arbitration, and the rules for arbitration, Hirschel testified.

Linking the issue to quality, Hirschel explained that her organization had noted a rise in the number of mandatory arbitration agreements while government studies continue to find "serious neglect and avoidable injuries and

Arbitration, continued on page 8

Advocacy, continued from page 1

was chief executive officer of Heritage Enterprises and president of the Illinois Health Care Association. He advocated tirelessly for seniors in long term care while he held those positions.

Groff was one of three recipients. Fellow 2008 Joe Warner honorees are Toni Fatone of Connecticut and Joyce Humiston-Berger of Colorado.

"Mr. Groff characterizes the goals and

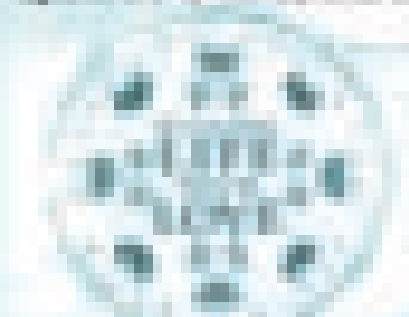
priorities our profession strives to achieve," said AHCA Chair Rick Miller. "He has dedicated his career to advocating on behalf of those people who often cannot speak for themselves. On behalf of AHCA/NCAL and our membership, we thank him for his commitment to advancing quality long term care on behalf of the millions of Americans we serve."

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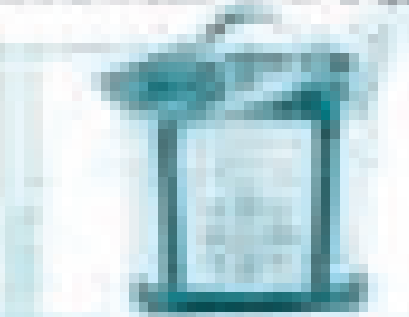
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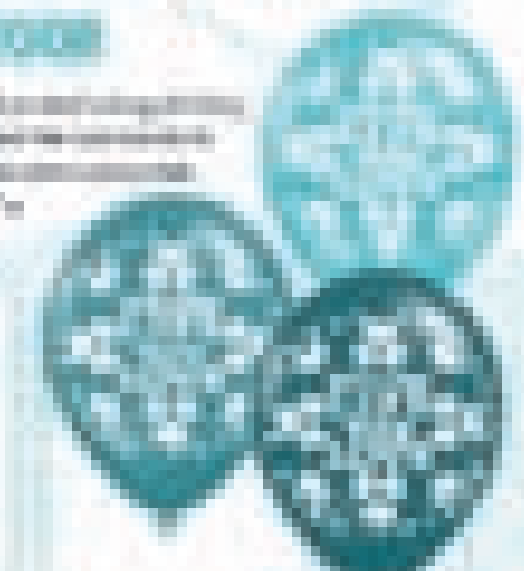
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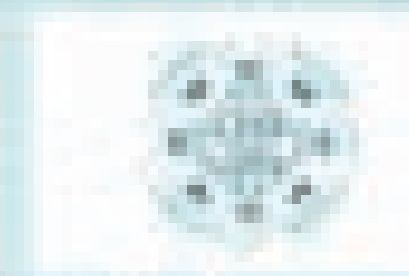
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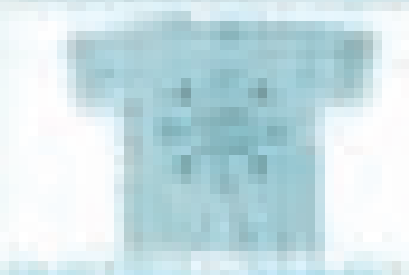
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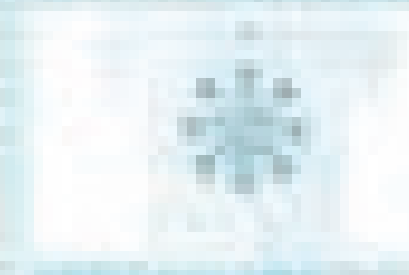
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NCAL Day • Monday, October 8, 2007 www.ncal.org

The 2007 NCAL Day will feature two tracks. The first track will feature programs focusing on technology in manufacturing. The second track will focus on business model "fixes". Attendees "fix their" issues and then have great skills and tools to address their issues and improve upon their

ability to address the "fix of their hat" in current living conditions. The focus will not be advanced case study and state of the art computer simulation to find perfect cases performing better than normally. The focus will be on what quality and financial issues and how to solve and implement critical components

NCAL Day Track & Chair

11:00am - 11:30am Welcome

Speaker: Mark Smith, CEO, Industrial Center for Technology (ICT), Kansas State University, Manhattan, KS

11:30am - 11:45am Executive Remarks of Mark Stangor's Session (New Rules for the New World)

Speaker: Mark Stangor, Director, Supply Management, University of

Learning Objectives:

- 1. Understand the importance of the customer as a source of innovation.
- 2. Understand the importance of the customer as a source of innovation and the importance of the customer as a source of innovation.
- 3. Understand the importance of the customer as a source of innovation and the importance of the customer as a source of innovation.

11:45am - 12:00pm Break

12:00pm - 12:15pm Strategy for Successful Innovation

Speaker: Mark Smith, Director, Industrial Center for Technology (ICT),

Learning Objectives:

- 1. Understand the importance of the customer as a source of innovation and the importance of the customer as a source of innovation.
- 2. Understand the importance of the customer as a source of innovation and the importance of the customer as a source of innovation.
- 3. Understand the importance of the customer as a source of innovation and the importance of the customer as a source of innovation.

12:15pm - 12:30pm Break

12:30pm - 12:45pm Product Development Innovation - Marketing (Part 1)

Speaker: Mark Smith, Director, Industrial Center for Technology (ICT), Kansas State University, Manhattan, KS

Learning Objectives:

- 1. Understand the importance of the customer as a source of innovation and the importance of the customer as a source of innovation.
- 2. Understand the importance of the customer as a source of innovation and the importance of the customer as a source of innovation.
- 3. Understand the importance of the customer as a source of innovation and the importance of the customer as a source of innovation.

12:45pm - 1:00pm Break with Q&A (Part 1) - Advertising Success Through Marketing (Part 1)

Speaker: Mark Smith, Director, Industrial Center for Technology (ICT),

1:00pm - 1:15pm Break

1:15pm - 1:30pm Leadership Success for Small

Speaker: Mark Smith, Director, Industrial Center for Technology (ICT),

Learning Objectives:

- 1. Understand the importance of the customer as a source of innovation and the importance of the customer as a source of innovation.
- 2. Understand the importance of the customer as a source of innovation and the importance of the customer as a source of innovation.
- 3. Understand the importance of the customer as a source of innovation and the importance of the customer as a source of innovation.

1:30pm - 1:45pm Break

1:45pm - 2:00pm Professional Development

Speaker: Mark Smith, Director, Industrial Center for Technology (ICT),

Learning Objectives:

- 1. Understand the importance of the customer as a source of innovation and the importance of the customer as a source of innovation.
- 2. Understand the importance of the customer as a source of innovation and the importance of the customer as a source of innovation.
- 3. Understand the importance of the customer as a source of innovation and the importance of the customer as a source of innovation.

2:00pm - 2:15pm New Small Meeting

Speaker: Mark Smith, Director, Industrial Center for Technology (ICT), Kansas State University, Manhattan, KS

Monday, October 8, 2006 • NCAA Day

Delicious food will lead to better quality athletes, increased participation, and increased awareness for all areas of the facility. Additional opportunities for our members "Tag-Team" and participate are linked to the event arrangements.



NCAA Day "Think Tank" • "Tag-Team"

(Tag-Team's activities will be repeated throughout the day.)

10:00am - 11:00am Breakfast

Speaker: **Scott Bell** (aka "Scotty Bell") • *Executive Director, University of Michigan, International Tennis Management* (U)

11:00am - 11:30am How the Benefits of Multi-Sport's Success Can "Take" You to the Next Level

Speaker: **Gregg Taylor** (aka "Gregg Taylor") • *Executive Director, U.S. Olympic Committee* (U)

Learning Objectives

- 1. Understand the benefits of multi-sport and how it can be used to your advantage.
- 2. Learn how to use the benefits of multi-sport to your advantage in your own facility, including marketing, recruitment, and more.
- 3. Learn how to use the benefits of multi-sport to your advantage in your own facility.

11:30am - 11:45am Break

11:45am - 12:00pm "Tag-Team" Breakfast

Speaker: **Scott Bell** (aka "Scotty Bell") • *Executive Director, University of Michigan* (U)

Learning Objectives

- 1. To be an effective and to be able to use the benefits of multi-sport to your advantage in your own facility, including marketing, recruitment, and more.
- 2. To be an effective and to be able to use the benefits of multi-sport to your advantage in your own facility, including marketing, recruitment, and more.
- 3. To be an effective and to be able to use the benefits of multi-sport to your advantage in your own facility, including marketing, recruitment, and more.

11:00am - 11:15am Break

11:15am - 11:30pm "Tag-Team" Breakfast

Speaker: **Scott Bell** (aka "Scotty Bell") • *Executive Director, University of Michigan* (U)

11:30am - 11:45am Lunch with NACAA - Networking Through Attached Meet

Speaker: **Gregg Taylor** (aka "Gregg Taylor") • *Executive Director, U.S. Olympic Committee* (U)

11:45am - 11:55am Break

11:55am - 12:10pm "Tag-Team" Breakfast

Speaker: **Scott Bell** (aka "Scotty Bell") • *Executive Director, University of Michigan* (U)

12:10pm - 12:20pm Break

12:20pm - 12:35pm "Tag-Team" Breakfast

Speaker: **Scott Bell** (aka "Scotty Bell") • *Executive Director, University of Michigan* (U)

12:35pm - 12:45pm "Tag-Team" Breakfast

Speaker: **Scott Bell** (aka "Scotty Bell") • *Executive Director, University of Michigan* (U)
Speaker: **Gregg Taylor** (aka "Gregg Taylor") • *Executive Director, U.S. Olympic Committee* (U)

Thank you to NCAA Day sponsors:



“I really liked the Attached Living Series of NCAA Day... Very informative.”

Female Residents Need To Express Themselves Through Traditional Roles: Study

Elderly women's positive conversations about their ability to continue their roles as a women, wives, and mothers are good indicators for assisted living caregivers that these residents have adjusted to living in an assisted living center.

Conversely, talk of being unable to continue their activities indicates a negative sense of self and a lower satisfaction with being in an assisted living community, according to new research.

'Although most of what these women reported they did to maintain the feminine sphere in their private homes had ended, they continued to manage and control the "downsized" feminine sphere through activities such as re-cleaning their apartments.'

—Heather Seipke,
University of Michigan, Flint

Associate Communication Professor Heather Seipke, of the University of Michigan at Flint, examined how elderly women communicated their sense of self and experiences of moving into assisted living. The results of in-depth interviews with elderly women in assisted living was published in the *Journal of Women and Aging*, "Assisted Living, Elderly Women and Sense of Self: Communicating the Impact of Reduction of Long-standing Activities."

The women interviewed had a median age of 86.5—about the same age as the average national female assisted living resident. Many of these women defined their sense of self through the

feminine sphere, also known as the "feminine mystique," which arose in the 1950s and defined the traditional role of women as a homemaker. While these women's ability to perform traditional activities has diminished with age, overwhelmingly their responses revealed to Seipke that most still judged themselves through the feminine mystique.

"Although most of what these women reported they did to maintain the feminine sphere in their private homes had ended, they continued to manage and control the 'downsized' feminine sphere through activities such as re-cleaning their apartments," Seipke reported. Women who reported the ability to rationalize the downsizing did not face a threat to continuity of sense of self.

Women who are having trouble adjusting their sense of self in an assisted living community will often express an unwillingness to clean up, do laundry, or cook. "Often times, these excuses are followed by elaborate discussions of the past in an attempt to 'prove' [the women's] worth in such areas," Seipke said. These types of conversations are warning signs that a resident is suffering and having a hard time adjusting.

Women who had not been married or did not see themselves as mothers or wives showed their competence through continued social activities within and outside the assisted living community, Seipke wrote.

Seipke suggests that assisted living communities look for activities that support traditional women's roles. Any activity or task that allows residents to maintain a feeling of control over their

Staff Training: Ensuring A Resident's Successful Transition

For more information about how to ensure a resident's successful move into assisted living, visit the NCAL members-only Web page, and under Practice Guidelines/Training Tools, download the inservice staff training tool, "Training Tool for Transitioning to Assisted Living."

"home" is helpful. Ask women residents to make decisions on how their personal living space should be cleaned and maintained, she said. "Ask residents to create a checklist of what they would like the cleaning staff to do and then make the resident responsible for checking off the list when the staff have cleaned," she said.

Or involve residents in holiday meal planning. For instance, ask them to share their recipes for holiday meals, then select a resident's recipe and ask her to discuss where she got the recipe and how she used it as a wife and mother, Seipke said.

"The significance of my research is proof of how important a healthy sense of self is to general well being," she says. "Research tells us that elderly individuals experiencing a high level of well being have a much more positive—physical and psychological—aging experience. My research proves that a healthy sense of self is closely linked to our ability to demonstrate competence in areas that are important to our core roles in life. For women in their eighties, this is the feminine sphere."

Correction: Ohio's NCAL affiliate was incorrectly identified in the June 2008 *NCAL Focus* as teaching "A Matter of Balance" to its members. The headline should have read "Arizona and Iowa Assisted Living Leaders Teach Falls Prevention Program."



Assisted Living Move In: Why Are Residents Choosing Your Community Over Your Competition?

Understanding what drives individuals to choose your assisted living community over the competition is important as the assisted living market becomes increasingly competitive. Do you know why your customers are choosing you over your competition? What drives a person to choose one community over another?

According to assisted living family satisfaction surveys conducted in 2007 by My InnerView (MIV), 3 percent of respondents said location was the most important reason they chose to live in a particular assisted living community. Twenty-seven percent of respondents said the facility's good reputation, and 18 percent said a recommendation from a relative, friend, doctor, or hospital was the most important reason they chose

Primary Factors In Selection

27% Reputation of community
18% Recommendation from a friend, relative, doctor, or hospital

—MIV 2007 Survey

the assisted living community. That means that reputation and recommendation were primary factors for 45 percent of all respondents—important information for marketing any residence or community.

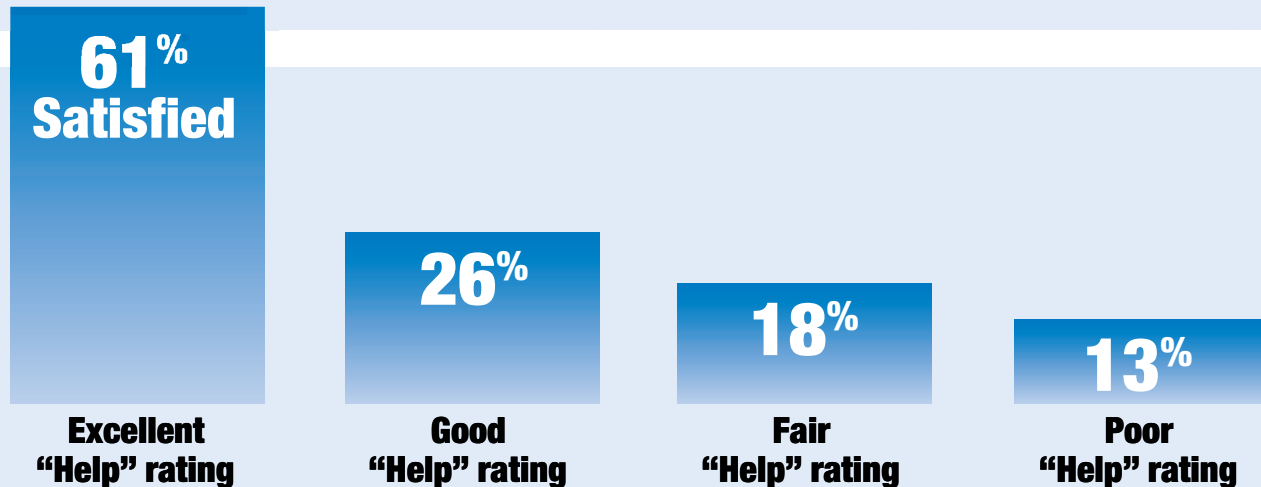
Capturing important demographic information, including why your customers are choosing your assisted living community over your competition, is a great way to stay ahead of others while continually improving your assisted

living residents' experience. When listening to the voice of your residents through a satisfaction survey process, you can:

- Identify and increase your competitive edge;
- Focus your marketing and advertising efforts on what drives results; and
- Put together evidence-based improvement initiatives and monitor the results.

NCAL's data partner, MIV, helps leaders listen to the voice of their customers while allowing them to benchmark their data with other providers to get a clear and accurate picture of satisfaction within their organizations. To learn how simple the process is, visit www.myinnerview.com or call MIV's Julie Flaig Smith at (952) 426-5543.

Managers who help with job stress have more **satisfied** staff



Scores represent percent of employees who gave an "Excellent" rating on item "Overall satisfaction" for each level of response ("Excellent," "Good," "Fair" or "Poor") to "Rate this community on helping you deal with job stress and burnout." Source: Assisted living employee satisfaction surveys conducted in 2007 by My InnerView Inc.





Arbitration, continued from page 2

deaths in nursing homes and systematic failure among regulators to cite or remedy the problems.”

“While surveyors miss a lot at nursing homes, licensed assisted living facilities are inspected much less often and less rigorously, and regulators in my state have few remedies if problems are discovered,” she testified. “There is no enforcement in unlicensed facilities ... an overburdened enforcement system in nursing homes, a limited system in licensed assisted living, and a nonexistent enforcement system in unlicensed homes cannot be an adequate substitute for litigation in egregious cases.”

In testimony submitted to the House and Senate, AHCA/NCAL reported on its efforts related to quality, including NCAL’s Guiding Principles for Quality in Assisted Living, which serves as a road map for its members to

ensure the delivery of resident-focused, high-quality care.

“Our association’s long-held mission clearly states, our goal is to provide a spectrum of resident/patient-centered care and services that nurture not only individuals’ health, but their lives as well by preserving their connections with extended family and friends and promoting their dignity, respect, independence, and choice,” Rice-Schild told the senators.

To review Gavin Gadberry’s and Kelly Rice-Schild’s testimony, visit www.ahcancal.org.

View the Senate hearing at <http://judiciary.senate.gov/hearing.cfm>, select S. 2838, the Fairness in Nursing Home Arbitration Act.

View the House Hearing on H.R. 6126, the “Fairness in Nursing Home Arbitration Act of 2008” at <http://judiciary.house.gov/hearings.aspx?ID=207>.

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