

Statement of

The Honorable Gordon H. Smith

United States Senator

June 18, 2008

STATEMENT OF RANKING MEMBER GORDON H. SMITH

Joint Hearing of the Judiciary Subcommittee on Antitrust, Competition,
and Consumer Rights and the Special Committee on Aging

"S. 2838, the Fairness in Nursing Home Arbitration Act"

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I want to thank Senator Kohl for holding this important hearing today and for calling together these two Committees. I also am happy to be here with my friend and colleague Senator Hatch and applaud him for his work on behalf of seniors not only in this Committee, but also as a member of the Finance Committee on which we serve together.

Nursing home quality and patient safety, as well as ensuring vulnerable groups have appropriate redress of their grievances, have long been important issues to me. I thank the panelists for being here today to discuss these critical topics. The essential work that each of our panelists does helps so many of our elderly family members age with dignity --whether that work is monitoring the care of a loved one, advocating for nursing home residents or working to ensure justice on behalf of those who have been injured.

The Federal Arbitration Act was enacted in 1925 as a means to ensure a framework for the enforcement and to determine the validity of arbitration agreements. Like our judicial system, no process is without its flaws. Therefore, since its enactment, improvements have been made to the Act to ensure the rights of citizens are protected and that they are able to fairly gain redress of their grievances.

Today, however, we are talking about a particularly vulnerable population. And when we talk about such populations, we must ensure an additional level of scrutiny to guarantee that their rights are protected,

as they may not be in a position to protect themselves. I am hopeful that today's discussion will be informative for all members as we work to ensure quality care, the protection of rights and reasonable health care costs for our seniors and persons with disabilities that find care in a nursing home.

Ensuring patient safety and fair outcomes for residents and family members is a responsibility that rests with no one party or entity. It is shared by the federal and state governments, law enforcement agents, local agencies, community advocates and family members. It is a responsibility that I take very seriously, as I know my colleagues do. I believe that more must be done on the front end for all stakeholders to work more collaboratively to curb the incidence of elder abuse. We must stop abuse and neglect before it happens. We owe that to the millions of seniors who have placed their trust in our nation's long-term care system.

I would like to applaud the work Senator Kohl has done in this area, especially in regard to helping nursing homes and other facilities better identify potential bad actors in the workforce and to ensure fair treatment of individuals looking to address their grievances. It has been a pleasure to work with him on the Special Committee on Aging to explore different ways that we can combat elder abuse and improve patient quality.

In the many hearings that we have held on nursing home quality we have learned that it is essential that we find more effective ways to help poorly performing facilities operate at a much higher level of care and, if they cannot improve, consider ways that they can be phased out of the system. We cannot let the inappropriate actions of a few to undermine the trust our nation's seniors have placed in the judicial system.

I am confident that the fine panel of experts Senator Kohl has assembled today will be able to provide a fresh insight on the work that is being done in our legal system to ensure justice for our seniors and those who love them.

Thank you.