

Statement of

The Honorable Russ Feingold

United States Senator

Wisconsin

June 18, 2008

Opening Statement of

U.S. Senator Russ Feingold

Hearing on

"Fairness in Nursing Home Arbitration Act"

Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights

As Prepared For Delivery

"One of the most fundamental principles of our justice system is the right to take a dispute to court. I have been concerned for many years that mandatory arbitration clauses in all sorts of contracts that consumers and employees must sign are slowly eroding the legal protections that should be available to all Americans. I have introduced legislation to make these provisions unenforceable because I believe they are inherently unfair. Arbitration is an important form of alternative dispute resolution. But it should never be forced on someone, particularly not on someone with unequal bargaining power before a dispute even arises.

"People who sign contracts to go into a long term care facility are among the most vulnerable of our citizens, whether they are seniors or their families. They sign papers that are handed to them in often very difficult and emotional circumstances. They aren't represented by lawyers to review the fine print. As we have heard from the witnesses today, residents and their families typically have no opportunity to negotiate the terms of the contracts they sign. Often, they believe, or are told, that the contracts are 'take or leave it' propositions. In some cases, the facility, but not the resident, retains the right to modify the contract, and even to pursue a collection action in court. If a dispute goes to arbitration, the secret proceedings often severely restrict discovery and impose limits on witnesses, experts, and information sharing.

"I am pleased to cosponsor the Nursing Home Contract Arbitration Fairness Act, introduced by Senators Martinez and Kohl. The bill will restore access to the courts for nursing home residents who have suffered abuse and neglect. That access in the end helps improve the quality of care for our seniors.

"Mr. Chairman, the rule of law means little if the only forum available to those who believe they have been wronged is an alternative, unaccountable system they have not chosen voluntarily and where the laws do not necessarily apply. This legislation protects seniors from exploitation while still allowing alternative methods of dispute resolution to be chosen by the parties. I applaud you and Senator Martinez for introducing the bill, and I hope this hearing will move us closer to enacting it."