Testimony of
Delta Holloway
On behalf of the
American Health Care Association

Good afternoon, Senator Breaux, Senator Craig and members of the Committee. Thank you for inviting me to testify before you today.

My name is Delta Holloway, and I have been caring for the elderly and disabled for 25 years. I am a Registered Nurse, a licensed nursing home administrator, have been a director of nursing, and am now the President and the quality assurance officer for Western Health Care in Boise, ID.

I'm testifying today on behalf of the American Health Care Association. AHCA represents some 12,000 long term care facilities, and more importantly, these facilities care for over one million patients.

First, I must say that the examples of abuse we've heard earlier today are utterly deplorable. Incidents like these must be prevented and can never be tolerated. I want to say for the record on behalf of myself, on behalf of AHCA and on behalf of all caregivers: Acts of criminality, while extremely rare in skilled nursing facilities, must be prosecuted to the fullest extent of the law. It's easy, I'm certain, for people to draw quick yet inaccurate conclusions about long-term care just by listening to what we heard earlier. It's important that we ensure the public is very well aware that these terrible situations are, by far, the exception – not the rule.

The providers entrusted to care for patients in nursing homes are the front lines of defense in abuse prevention. We strive first to prevent all incidents of abuse, in the rare instance when they do occur, we are the ones who report them, do a preliminary investigation and remove personnel if appropriate

The report released today by the General Accounting Office (GAO) raises several serious issues and makes many sound recommendations. We concur with each and every one of the GAO's recommendations.

To make the system better, providers need to:

- Ensure an efficient reporting system predicated on a clearly defined standard of abuse is established.

- Work as partners with all parties involved in the complaint and investigation process.

First, with regard to identifying abuse, this is not as simple as it may seem. However if the standard is clear, it will be easier to enforce. Every stakeholder in the system would benefit from a clearer definition.

Often our patients have medical conditions that make some daily living activities difficult. Some medically necessary clinical procedures involve therapeutic contact that is uncomfortable, and sometimes even painful. Changing pressure ulcer dressings from wet-to-dry is painful; physical therapy for contractures can hurt. It is not uncommon for providers to deal with allegations of abuse arising from this type of contact.

But, therapeutic contact in and of itself is not abuse, and a definition that distinguishes between appropriate, although uncomfortable, contact and true abuse must be established.

On the other hand, providers cannot assume that requiring a patient to accept medical treatments always is appropriate. For example, I provided care for an elderly woman with significant dementia and difficult behavioral problems. My patient acted out and was abusive of caregivers, refusing meals and care when not taking medication. On medication she was much happier, enjoyed a better quality of life and accepted her physician ordered and team-planned medical care.

On one occasion, a registered nurse who had been with me for years attempted to force this woman's mouth open to administer medication. A Certified Nurse Assistant (CNA) saw this and immediately reported the incident to me.

I called the survey agency, completed a report and suspended the nurse with pay until a thorough investigation could be done. The state licensing board reviewed the nurse's actions and decided her temperament was not well suited to working in long term care, so they encouraged her to leave the profession. Although the state licensing board did not revoke her license, I terminated her. After over three years of quality service, I let my nurse go.

This woman did not intend to hurt the resident. Was it abuse? I found that it was because the family had made its wishes known that the patient not be forced to take medicine, and the RN knew this. Should law enforcement have been called in? Would they have handled it better? I don't know. All I know is that I am responsible for ensuring all residents are cared for, protected and their wishes respected.

There are many gray areas to be grappled with when trying to identify abuse. An effective approach must separate abuse from neglect, from appropriate medical treatment and from unnecessarily harsh or disrespectful treatment. It is not an easy task.

Second, providers sincerely want to work with the community, local law enforcement and state survey agencies to protect residents, and as caregivers, we are by far the best equipped to do so. Providers need to be acknowledged as full partners with state agencies and law enforcement in the abuse prevention, reporting and investigation process.

Recently CMS developed seven key components to detect and prevent abuse. The components were incorporated into the survey inspection protocol, and surveyors were trained in their use. However, in some states, providers were not informed of the new abuse prevention protocol or trained to use them until well after the survey inspection process was underway.

Obviously, neglecting to inform or train providers severely undermines the benefits of having protocols in the first place. A system that is not adversarial and views providers as part of the solution would be far more effective and much more beneficial to what matters most: our patients. Because providers are the first line of defense for patients, they should be trained in conjunction with surveyors in any new abuse prevention methods.

One area where providers have been partners is the CMS abuse poster campaign mentioned in the report. AHCA has been working for years on this effort and is fully supportive of prominently posting awareness and reporting information in our homes.

With regard to reporting abuse, nursing homes are required to report all incidents of suspected abuse within 24 hours and conduct an investigation. A written report of investigation findings must be submitted to the state survey agency within five days. Additional agencies that must be notified vary according to state law.

Among the 50 states, there are many different reporting requirements in need of standardization. In Idaho, nursing homes must report a death or serious injury causing jeopardy to the life, health or safety of a resident to law enforcement within four hours. Knowing whom to report to and under what circumstances is a key issue that must be addressed.

Last month in my facility, a nurse aide was walking past a room and witnessed a person throwing towels and washcloths at a resident's face, and immediately reported it. I notified adult protective services and the state survey agency.

It turned out to be the resident's son who had been her caregiver for several years prior to her living with us. He was adamant that he be allowed to do this and that he brush her hair in an aggressive, painful manner. My administrator said no, that while she is entrusted to us for care, we must take responsibility to protect her – as is the law.

Adult protective services declined to intervene saying that as long as she was in our facility, her safety and well-being was under the jurisdiction of the state survey agency. To make matters worse, the son was so angered by our actions that he had his mother discharged from our facility. There is simply no clear reporting guidance in this area.

Streamlining and standardizing the process so that providers report all allegations of abuse to the state survey agencies would eliminate confusion among consumers, patients and providers. It would also simplify the process for the benefit of everyone involved.

We know the patients and the caregivers first hand, and are therefore most qualified to evaluate the situation. We stand ready to work with local law enforcement, the administration and Congress to continue to lower incidents of abuse and to improve reporting and prosecution for all concerned.

While incidents of abuse were cited in just 4.3% of nursing homes nationally, it's still too high. We must keep improving, and to do so it is imperative that we combat abuse with a more focused collaborative approach.

As I said, we have reviewed the GAO report, and we wholeheartedly agree with each and all of the recommendations. We do have several suggestions for taking them further and for refinements that would improve both prevention and reporting efforts.

Among those suggestions are:

First, there should be one single point of contact for anyone -- resident, facility, family, staff, ombudsperson, etc. -- to make a report, preferably to the survey agency. This would eliminate the multiple agency listings in directories, many of which are not equipped or authorized to take a report. This would also enable every facility to have an accurate phone number to post, and when changed, could be quickly revised and publicized. The agency should then be responsible for immediate notification of local law enforcement.

Second, when appropriate, we also believe that education and training of local law enforcement and the Medicaid Fraud Control Units (MFCUs) on the nursing home environment, on types of patients, and on staffing situations would enhance the ability to conduct investigations and make an appropriate finding.

This training would be critical to local law enforcement in helping them understand the differences between therapeutic contact, clinical necessities, dignity violations and actual abuse in the nursing home setting. The importance of this training cannot be over emphasized. We stand ready to work with CMS

and law enforcement to develop and implement training programs, including on-site visits for law enforcement when appropriate.

Finally, we believe similar procedures should be put in place to protect vulnerable elderly and disabled citizens, regardless of the setting in which they reside or receive care.

We urge that a standard, clinically enlightened definition of abuse be adopted in consultation with government, providers, law enforcement, consumers and other stakeholders. We believe that a more precise definition of abuse will lead to a better understanding of the problem and more successful targeting and prosecution of offenders.

We agree with the GAO that timeframes for determination and inclusion of abuse findings in the state nurse aide registry should be shortened. We also agree that state registries should be expanded into one national registry. A more efficient process cannot be achieved without expediting the adjudication process for complaints. Any changes designed to improve the timeliness of reporting must be implemented in a manner that does not compromise the due process rights of caregivers.

The American Health Care Association has, for years, been working with Senator Kohl to develop a national criminal background check system. Any such system should not be limited to nursing homes; rather it should include all health care settings where vulnerable patients receive care.

Due to the severe staffing shortage in long-term care, background check systems should produce quick results and not unnecessarily deter the hiring of care giving staff. Finally, background checks must be funded so as not to take resources away from our primary mission of patient care.

We support the concepts stated in Senator Kohl's legislation and will work towards prompt passage of his bill.

And last, but certainly not least, government must become a partner in facilitating adequate staffing of our homes. Abuse takes place when not enough people are involved in care, or when the wrong people are hired. CMS just finished a report that documents the need for over 400,000 additional nursing staff right now. Unfortunately, government has not met its responsibility for funding this level of staff, or developing the needed workforce.

In summary, thank you for the invitation to testify, and for treating providers as they should be – part of the solution to protect residents, prevent abuse and report incidents.

- Providers are the front lines of prevention of abuse and first reporter and investigator. We must be partners in this critical effort.

- Abuse must be clearly defined to be appropriately combated.

- We agree with all GAO recommendations and have additional suggestions to go further.

- We support the Kohl national criminal background check system and an expanded national nurse aide registry.

- Providers, residents, family and others need a single point of contact and process for reporting abuse.

- We must have enough dedicated staff to be able to prevent abuse more effectively.

Mr. Chairman, we care for our residents all day everyday – both professionally and personally. No one wants to prevent abuse, or punish and remove perpetrators more than we do. We stand ready to work with Congress, the administration and local law enforcement to prevent abuse and protect our patients.