TESTIMONY OF

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BEFORE THE SENATE JUDICIARY COMMITTEE ON COMPREHENSIVE IMMIGRATION REFORM:

THE BORDER SECURITY, ECONOMIC OPPORTUNITY, AND IMMIGRATION MODERNIZATION ACT, S.744

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Good Morning, Chairman Leahy, and distinguished members of the Committee. I'd like to thank you for holding this hearing to examine the immigration reform needs of our Country, and I especially appreciate the opportunity to appear before you here today. My name is Fred Benjamin, and I am the Chief Operating Officer of Medicalodges, Inc., a company that offers a continuum of health care options which include independent living, skilled nursing home care, rehabilitation, assisted living, specialized care, outpatient therapies, adult day care, in-home services, as well as services and living assistance to those with developmental disabilities. Medicalodges is a member of the American Health Care Association (AHCA), which is a member of the Essential Worker Immigration Coalition (EWIC) – a broad-based national coalition of businesses and trade associations concerned about the shortage of semi-skilled and unskilled labor.

The American Health Care Association (AHCA) is the nation's largest association of long-term care with more than 10,000 members that include not-for-profit and proprietary skilled nursing facilities, assisted living communities, and facilities for the developmentally disabled. AHCA represents over 1.5 million nursing staff, and approximately 1.7 million residents and patients.

I thank you, Senator Leahy for bringing the immigration reform debate to the forefront. I also greatly appreciate the efforts of the "Gang of 8" Senators for their bi-partisan work culminating in the introduction on April 17, 2013 of S. 744, The Border Security, Economic Opportunity, and Immigration Modernization Act of 2013. This bill addresses the major elements of immigration reform needed by the business community. Specifically it provides new and revised visa programs for skilled and lesser-skilled workers to provide businesses a way to get the workers

needed from abroad when U.S. workers are unavailable, a mechanism for the undocumented to earn legal status after being screened and paying a penalty, and a new employment verification system.

Medicalodges was launched in 1961 when its first nursing home, Golden Age Lodge, was opened in Coffeyville, Kansas by founding owners Mr. and Mrs. S.A. Hann. The company grew through the 1960s with the addition of eight nursing facilities. In 1969, Golden Age Lodges was renamed Medicalodges, Inc. As new care centers were built or purchased, the company expanded its products and services to include a continuum of health care. In February 1998, the employees of Medicalodges acquired the company from its previous owners in a 100% Employee Stock Ownership Trust transaction. Today, the company owns and operates over 30 facilities with operations in Kansas, Missouri and Oklahoma, and employs over 2200 people in the communities it serves.

I have served as the Company's Chief Operating Officer since May 2009. I am honored to have served for 30 years in this industry, which includes senior management roles in skilled and sub-acute care, hospitals and other for-profit and not-for-profit ventures. I am also currently serving as Chairman of the Board of the Kansas Health Care Association, the leading provider advocacy group for seniors in Kansas.

Worker Needs are Critical and The Impact is More Profound in Skilled Nursing Facilities

We have critical staffing needs. There are chronic shortages throughout the nursing home industry. If you are in the business of caring for our nation's elderly, whether you are for-profit, not-for-profit, or government-managed, it is a daily struggle to find enough dedicated caregivers

to care for the people in your charge. Let me tell you a little about the state of nursing homes today.

We are different from other employers in many ways. We are responsible for the lives of 1.5 million frail and elderly citizens nationwide. And this is the fastest-growing segment of our population.

The general causes of the shortage have been explored. In addition to the causes that affect employers of all types, the nursing home industry is confronted with the following: .

- A newly altered regulatory system that focuses on fines and penalties (often for failing to provide adequate personnel) instead of the previous system where government employees were encouraged to help centers meet the challenges they face.
- Dramatically increased competition for caregivers from assisted living centers, independent housing for the elderly, home care centers and hospital-based nursing homes – all of which seek the workers we traditionally employed.
- Annualized turnover rates of nearly 100% in our industry among staff personnel, and now excessively high turnover rates among our managers, who are increasingly frustrated with overwhelming paperwork, regulation, and underfunding.
- Challenge of caring for infirm and often difficult residents.
- Mandated training and certification of most employees.
- Need for dedicated and caring personalities.

- Increasing age of workforce because of fewer young workers entering long-term care; this means that these young workers are increasingly *not* choosing long-term care as a profession of choice, which is alarming as baby boomers age in greater numbers.
- Underfunding through Medicare and Medicaid, which impacts wages for our workers

The Role of Caregiver

Dedicated caregiving staff that work in our facilities every day and every night are the unsung heroes of the American workforce. The job of caring for the elderly and disabled is one of the most demanding jobs on many levels.

It is difficult physically to lift, turn, transport, position, and keep up with our residents' care day and night. It is psychologically demanding to work with our Alzheimer's residents who are often confused, angry, scared, or lonely, and to make their days rewarding and productive. It is emotionally draining to care for those in the twilight of their lives, share their frustration and fears, and still assure that they are getting the very best medical care we can provide. Their needs must come first, and staff must learn to put their own needs second to needs of their residents. These are the residents that hospitals cannot care for, whose families cannot care for them, and who are dealing with multiple chronic illnesses.

Our dedicated staff does a very hard job for a wage that is as much as we can pay, but never enough, in my opinion, for the service they provide. Without these caregivers, our seniors will suffer.

The shortage of labor and the difficulty in finding adequate levels of staff on a daily basis, 24-hours each and every day of the year, is cited as the number one reason prompting many of our

existing workers to leave our company and seek alternative employment. We lose some of our best managers during this period of time when their skills and compassion are crucially needed.

Because of the difficulty of the job, and our inability to increase wages or prices, long-term care has always been a high turnover industry. My company's turnover rate in lower skilled categories is approximately 60% annually – significantly lower than most companies in the industry. We do focus on retention initiatives and employee recognition and involvement. We have implemented dozens of programs, and empowered our facilities to implement their own initiatives. We are active in implementing total quality management techniques successfully used by the best companies in America. Indeed, four of our facilities were recently identified by *U.S. News and World Report* as among the "Best in America."

Our nursing centers are not factories. We cannot stop the assembly line or reduce the services we provide to accommodate budget cuts. The elderly we care for depend on us 24 hours a day, every day, weekends and holidays. If we have a staff vacancy, we must fill that vacancy. Ms. Johnson will still need help getting dressed and eating in the morning. Mr. Smith will need therapy to help him swallow and learn to walk after a stroke. **These services are not optional**. We need certified nurse aides (CNAs), licensed practical nurses (LPNs), and registered nurses (RNs) to provide skilled services around the clock in every facility. We provide services in both rural and urban locations. Vacancy rates for CNAs can approach 20%; for LPNs and RNs, the rate is 10%.

Addressing the Recruitment Problem

What has Medicalodges done to address the vacancies and shortages?

Historically, I have hired extensively from the welfare rolls. The nursing home industry in general has hired over 50,000 welfare recipients in the last three years. Most of them are single mothers whom we train to become certified nurse aides, and put on a career path in health care. This is the only career path that I know of that can help take people from economically disadvantaged situations to the middle class. Unfortunately, all too often they will complete their training with us, and then be hired away by hospitals or other providers who do not have to deal with our heavy reliance on government-set payment rates.

- Several states, including Wisconsin and Florida, have taken steps to use federal funds to help support training programs specifically targeted on meeting the labor needs of the long-term care industry.
- In our profession, the residents' welfare must be the top priority. Hence, we perform criminal background checks on each potential employee. This process significantly adds to costs, but eliminates an estimated 10% of applicants from eligibility for hire, and appropriately so.
- We have offered signing bonuses of $1,500 for certified nursing assistants – and even higher for licensed personnel.
- We have set up tables in grocery stores to recruit new employees, sent direct mail, posted job openings in communities, schools, and even Laundromats.
- We offer multiple incentives for recruitment. We have flexible scheduling, good benefits, recruitment bonuses, shift differentials, float incentives, pay in lieu of benefits, and many other programs to attract the dedicated caregivers we need.
- Every one of my facilities has a substantial recruitment and retention function. We make great efforts to reduce turnover and maintain a stable workforce through

flexible scheduling, employee appreciation efforts, mentoring programs, and much more. We even involve our residents in interviewing candidates. Yet it is still not enough.

Comprehensive Immigration Reform

Comprehensive immigration reform should be guided by three basic goals. First, America must always remain in absolute control of its borders and know who lives within those borders.

Second, new immigration laws should serve the needs of the U.S. economy. If an American employer is offering a job that American citizens are not willing or available to take, we ought to welcome into our country a person who will fill that job – especially a job that has the capacity to improve the health and well-being of our seniors and people with disabilities. With the high turnover rate for CNAs and personal care workers in some of our skilled nursing facilities and assisted living residences, we find it illogical that an administrator must send his or her most senior, qualified aide home after just two or three years simply because they were born in a foreign country.

Third, undocumented workers who pay taxes and contribute to our labor needs should be given a vehicle to earn legal status. Of course, we should not provide unfair rewards to illegal immigrants in the citizenship process, or disadvantage those who came here lawfully; however, we must recognize the contributions of these workers and provide mechanisms for attaining legal status.

We currently have a broken immigration system that was created in 1986 after the passage of the Immigration Reform and Control Act. We have let our immigration system spin out of control over the past 2 decades. That is why AHCA in collaboration with EWIC helped craft the business community's basic principles of what comprehensive immigration reform should include:

- Reform should be comprehensive, addressing both future economic needs for workers and undocumented workers already in the United States.
- Reform should strengthen national security by providing for the screening of foreign workers and creating a disincentive for illegal immigration.
- Reform should strengthen the rule of law by establishing clear, sensible immigration laws that are efficiently and vigorously enforced.
- Reform should create an immigration system that functions efficiently for employers, workers, and government agencies.
- Reform should create a program that allows hard working, tax-paying, undocumented workers to earn legal status.
- Reform should ensure that U.S. workers are not displaced by foreign workers.
- Reform should ensure that all workers enjoy the same labor law protections.

While everyone is still reviewing S. 744, I believe that it captures most of the needs of immigration reform identified above. In particular, the W visa program is designed to allow employers to match with qualified foreign nationals. This new nonimmigrant classification for non-agricultural lesser skilled foreign workers, while limited in the number of workers permitted to enter in any given year, would allow employers to bring W visa holders to the U.S. when U.S.

workers cannot be found. It would be valid for 3 years and could be extended in increments of 3 years.

Conclusion

Our labor shortage is our most pressing operating problem. The labor shortage deprives us of the most valuable resource we have: our caregivers. If we are to meet the expectations set for us, policymakers must act now to expand access to new pools of staff and take steps to encourage employment in long-term care. We need to increase staff supply, and there are many talented immigrants who are anxious to enter the caregiving field, yet face insurmountable roadblocks. These talented caregivers should be given the opportunity to make a living and make a difference in their own lives and the lives of others. To increase the supply of labor, please give special consideration to permitting new entry for immigrants with nursing skills as well as increasing the pool of unskilled labor. We need a new immigration system that serves the economic needs of the U.S. economy. If an American employer is offering a job that American citizens are not willing to take, we ought to welcome into our country a person who will fill that job – especially a job that has the capacity to improve the health and well-being of a vulnerable senior, or a person with disabilities.

We struggle every day to ensure that the labor shortage does not negatively affect the quality of care delivered in our facilities. This is a difficult and highly complex balancing act that is currently taking place in nursing centers across the country. I urge you to take a broader look at this staffing crisis and think about the frail and elderly population we serve – our parents, our grandparents, our aunts, our uncles, our neighbors and yours - those special people who have given so much to us and our country. We owe it to them to provide the best possible care, don't

we? I am here to ask you who will care for them if this critical situation is not addressed immediately. I thank the committee for its commitment to resolving this onerous problem in a manner that advances ideas and solutions in a straightforward, bipartisan fashion.

Thank You. I am happy to answer any questions that you may have.