Statement of

Bruce Yarwood, President and CEO
American Health Care Association

for the

U.S. House Ways & Means Health Subcommittee
"Hearing on Trends in Nursing Home Ownership and Quality"
November 15, 2007

Assuring quality of care for the millions of Americans who rely on critical long term care services is the driving force behind the advocacy efforts of the American Health Care Association (AHCA) and its nearly 11,000 member facilities.

Across the country, skilled nursing facilities serve approximately 3 million elderly and disabled people each year – the vast majority of whom rely on government programs to pay for the cost of their care. Nationally, nearly two-thirds of nursing facility residents rely on the Medicaid program to pay for their long term care needs, and nearly 14 percent have their skilled care and rehabilitative services covered by Medicare. The provision of skilled nursing facility care truly is a partnership between the federal government and the profession that employs more than two million direct care workers caring for the nation's most vulnerable population.

The recent New York Times article, *"At Many Homes, More Profit and Less Nursing"* raised questions about the care provided in a small proportion of nursing facilities – those purchased by private equity investment firms. As the largest organization representing the profession, we must stress that we do not condone any activities that result in diminished quality in our nation's nursing homes. We have long been advocates for enhancing the quality of care and quality of life for the patients and residents who require skilled nursing care. In fact, the profession is as committed as ever to providing the highest quality care to every resident. We firmly believe that the findings included in the article in question do not accurately depict the state of our nation's nursing homes – and in some cases they are inaccurate and misleading.

Quality is Improving in America's Nursing Homes

AHCA, our member facilities and the long term care profession as a whole can point to concrete improvements in the quality of care delivered in our nation's nursing facilities in recent years. The Online Survey, Certification and Reporting (OSCAR) data tracked by the Centers for Medicare and Medicaid Services (CMS) clearly points to improvements in patient outcomes, increases in overall direct care staffing levels, and significant decreases in quality of care survey deficiencies. At the same time, an independent analysis confirms consistently high patient and family satisfaction with the care and services provided.

Positive trends related to quality are also evidenced by profession-based initiatives including *Quality First* and the *Advancing Excellence in America's Nursing Homes* campaign – both of which are having a significant impact of the quality of care and quality of life for the frail, elderly and disabled citizens who require nursing facility care. Through the development of a private-public "culture of cooperation" nursing homes are meeting the challenge of quality care head on, and this commitment has propelled the profession forward. Consider the following:

- Nationally, direct care staffing levels (which include all levels of nursing care: RNs, LPNs, and CNAs) have increased from 3.12 hours per patient day in 2000 to 3.39 hours in 2007.

- There are positive trends in the quality measures posted on Nursing Home Compare and tracked by the Center Medicare and Medicaid Services (CMS) including:

    - Pain for long term stay residents vastly improved from a rate of 10.7 percent in 2002 to 4.6 percent in 2007 – more than a 50 percent decrease;
    - Use of physical restraints for long stay residents dropped from 9.7 percent in 2002 to 5.6 percent in 2007;
    - Pressure ulcers were reduced for both low and high risk long stay residents – with hard to treat, high risk pressure ulcers reduced from 13.8 percent in 2002 to 12.8 percent in 2007; and
    - For short-term stay patients (many of whom are admitted to the nursing facility with a pre-existing pressure ulcer) the pressure ulcer measure also improved – from 20.4 percent in 2002 to 17.5 percent in 2007.

- Substandard Quality of Care Citations as tracked by CMS surveys were reduced by 30 percent in five years – from 4.4 percent in 2001 to 3.1 percent in 2006.

These quality improvements can be evidenced in the level of satisfaction of the patients and family members of patients in today's nursing home. In May 2007, *My Innerview, Inc*. – an independent research firm – released its second annual report on patient and family satisfaction for the care and services provided in nursing facilities. For two consecutive years, more than four out of five of the more than 92,000 individuals surveyed assessed their overall satisfaction as good or excellent – with nearly 90 percent of respondents rating highly the nursing care received.

Exposing Inaccuracies in a Misleading Report

Despite the fact that the long term care profession's commitment to quality improvement is producing significant positive results, the September 23rd *New York Times* article seemingly casts a dark shadow on our nation's nearly 16,000 nursing facilities. While the article focused on fewer than 10 percent of the nation's nursing homes – and its most troubling findings involved just five percent of all skilled nursing facilities nationwide – it had the effect of impugning the reputation of most long term care providers. Such an inference is unfortunate – and inaccurate.

The assertions in the article were distressing to AHCA and our member facilities and we took the issues raised very seriously. After further scrutiny of the data and conclusions, we and others have determined that there are several misperceptions about the challenges facing America's skilled nursing providers. We firmly believe that much of the article is based on the application of problematic analytic techniques applied to problematic data.

It is critical to highlight that in the weeks immediately following the *New York Times* story, contradictory evidence is emerging that refutes many of the findings highlighted.

After the article was published, the Florida Agency for Health Care Administration – the oversight agency that licenses and inspects many of the nursing facilities noted in the article – issued a report, *Nursing Homes Regulation, Quality, Ownership, and Reimbursement*, specifically to address the fact that "recent headlines have questioned the appropriateness of nursing home ownership by investment firms." In the October 2007 report, the agency specifically states that "(t)here is no evidence to support that the quality of nursing home care suffers when a facility is owned by a private equity firm or an investment company…" Further, the report clearly iterates that "(r)egardless of who owns or operates a nursing home, it will still have to meet regulatory requirements or be subject to state and federal sanctions." A copy of this report is attached to this statement.

Additionally, an analysis was conducted by LTCQ, Inc. – a data-driven consulting company lead by four leading academic experts in the field of long-term care – to determine the validity of the assertions and conclusions presented by the New York Times.

Their November 6, 2007, report states that "an unequivocal conclusion of LTCQ's study of over 800 [private equity]-owned facilities is that ownership by a [private equity] firm and operation by a different organization is compatible with the highest quality of care." The analysis further concluded that any issues concerning care quality at private equity owned facilities are related to "operations of the specific facility and not to ownership arrangements as such."

Key findings of the LTCQ analysis:

Staffing conclusions do not reflect full labor component in long term care facilities. The LTCQ analysis unveils that the "author focuses exclusively on RN staffing, while the industry in general – including non-profits and owner-operated facilities – has relatively more LPNs than RNs in its pool of licensed nursing staff. Looking at ***total licensed*** staff tells a different story than just looking at RNs. In fact, the facilities studied by LTCQ generally increased their LPN and total licensed staff ratios over the years after they were acquired by [private equity] firms."

Reliance on OSCAR staffing data is limiting. The workforce data highlighted in the article was drawn from OSCAR data, rather than more accurate sources such as payroll records or staff schedules. According to LTCQ, OSCAR staffing data are based by sampling staff hours over a two-week period and are not necessarily representative of year-round staffing patterns. As well, the OSCAR staffing data do not take into account any qualitative aspects of staffing such as staff experience, turnover rates, and the use of contract staff.

The unadjusted CMS Quality Measures do not accurately reflect patient conditions or outcomes. Facilities that treat greater numbers of more medically acute or complex patients will look worse on quality measures if they are not fully adjusted for residents' baseline condition – as is the case with the CMS Quality Measures (QMs). In general, the nursing homes purchased by the private equity firms highlighted in the article served a relatively high number of residents on Medicare and Medicaid as opposed to those who privately pay for their care. Private pay residents tend to be healthier than Medicare and Medicaid beneficiaries so facilities with high private pay proportions would fare better on many of the QMs even if the quality of care was the same.

A full copy of the LTCQ analysis is attached which more thoroughly addresses these and other areas of concern regarding the *New York Times* article.

Moving Forward to Ensure Continued Quality Improvements in Long Term Care

All nursing facilities in the United States are required to meet rigorous regulatory requirements in order to serve their residents. These requirements – and the survey and enforcement process used to implement the regulations and standards – are blind to the facility's ownership status.

As stated above, nearly 80 percent of the patients and residents in our nation's long term care facilities rely on government funding – Medicare and Medicaid – for specialized care and services. Non-governmental, private sources of capital are needed to ensure continued enhancements particularly in the areas of technology, staffing and structural improvements to an aging stock of nursing homes can be realized.

Greater capital investment increases worker productivity, improves service and quality care delivery to patients, and allows for renovation and improvements of aging physical plants. With budgetary constraints and limited resources, state Medicaid programs are reluctant to direct funding towards these forms of capital improvement. Instead, funding increases are commonly dedicated where they should be, to hands-on patient care. Private equity investment in the nursing home sector should continue to be a vital source of these necessary resources. In this regard, we whole heartedly agree with the conclusion presented in the Florida Agency for Health Care Administration report, which stated, "the quality of a nursing home depends upon the adequacy of funding available to provide care." AHCA further agrees that the New York Times analysis warrants further discussion and debate, but cautions that the conclusions of the article should not be applied with a broad-brush to the entire long term care profession.

AHCA and our member facilities remain committed to efforts and initiatives that enhance the quality of care for our nation's most vulnerable citizens – the frail, elderly and disabled. We want to ensure that quality long term care is never diminished, and thus, we welcome opportunities to work with this subcommittee and the entire Congress to protect and preserve quality senior care.

The wave of aging baby boomers that will require care in the not too distant future demands it.

###