

**Testimony of Linda Stewart, R.N.
of Houston, Texas
On the Fairness in Nursing Home Arbitration Act of 2008
(HR 6126)
Before the Commercial and Administrative Law Subcommittee
Committee on the Judiciary
United States House of Representatives
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Chairwoman Sanchez, Ranking Member Cannon and distinguished Members of the Subcommittee, thank you for the invitation to testify at this hearing about my experience with mandatory arbitration in nursing homes. I would also like to acknowledge my attorney, Mr. Cunningham, who has accompanied me here today.

I am here to testify in strong support of H.R.6126, the "Fairness in Nursing Home Arbitration Act of 2008," a bill that would end mandatory arbitration in nursing home contracts so that no other family has to go through what my family has been through.

I have an MBA and am a registered nurse. I have been in the nursing profession for twenty-eight years, including 10 years as a Captain in the United States Air Force. I have worked as a critical care and ER nurse as well as a nursing director in a nursing home. I am now administering exercise programs for senior citizens and am currently working towards another Masters degree in Nutrition.

My professional and personal experience with nursing home care has left me devastated and my hope is that by telling you my story today, other families will be protected in the future.

At the age of 92 my grandmother, Hattie Miller, lived by herself in Seguin, Texas, which is just outside of San Antonio. She was generally very alert and capable, and had control over her own financial affairs. However, after she had a transient ischemic attack, also known as a mini-stroke, and seemed confused, we decided to put her into a nursing home.

The hospital assigned a social worker to my grandmother who said she would help us find a nursing home close by. The social worker called all three homes in the area, but the Guadalupe Valley Nursing Center was the only nursing home that had any open beds. After working in a nursing home I can tell you that generally families have very little or no choice when it comes to where they have their loved ones admitted. Because space is so limited, most families have to take whatever is available at that time and there is no real choice.

On the afternoon that my grandmother was admitted into Guadalupe Valley, the nursing home called my sister at work. They told her that she needed to rush down to the nursing home to sign paperwork or my grandmother would have to move out of the nursing home. My sister rushed there to sign the paperwork because she didn't want our

grandmother to lose her place at the home. When she got there, she told the nursing home administrators that she didn't want to sign anything financial because she did not have power of attorney over my grandmother's affairs. They told my sister that there was nothing in the documents except standard forms that they needed signed just so they could receive my grandmother's monthly social security check and to make sure that she received the care and the medicines that she needed. They never once mentioned that the many documents contained something that would limit our family's legal rights. In fact, when the nursing home administrator presented the document that contained the arbitration clause, my sister asked her, "What's this?" The administrator replied, "Oh that's nothing. We just need you to sign all of these documents." At no time did the administrator explain the mandatory arbitration clause. It turns out that the nursing home did not even comply with current Texas law which says that this type of clause has to also be signed by our attorney in order for it to be valid.

After about three weeks, nursing home employees were apparently transporting my grandmother from her bed to her wheelchair and her leg was badly injured somehow. No one ever reported the incident to us or anyone else; they simply put her back in bed.

After we went to see her and she was complaining of extreme pain in her leg, we brought her to the hospital. It turns out that my grandmother's leg was broken in two places. One of these was an oblique or spiral fracture which results when the bone is completely twisted – imagine twisting the cap off a bottle of soda; this is a very similar motion. The follow up care she received for her leg at the nursing home was inadequate, and her injuries were so severe that they had to amputate my grandmother's leg a couple weeks later. We couldn't believe that our grandmother had suffered such a severe injury in the nursing home and it was never reported to us or initially treated by the staff.

After we filed a lawsuit, the nursing home tried to force us into binding arbitration. That was when we learned that buried in the documents my sister had signed that day was a binding mandatory arbitration clause. My attorney worked hard to have the clause overturned by the court, but the corporation that owned the nursing home told us that they would appeal all the way to the Texas Supreme Court unless we agreed to settle. Because the Texas Supreme Court has a history of upholding this kind of mandatory clause, we were practically guaranteed to lose our fight. We were forced to settle the case. We couldn't believe that after the way my grandmother was treated we didn't have the right to try our case to a jury. We also feared that without being able try our case to a jury, no one would know that this had happened. I wonder now, after having gone through this, how many other incidents there have been like my grandmother's that no one is able to know about because the nursing homes are able to hide behind these arbitration contracts.

I have seen the nursing home industry from the perspective of a family member and also an employee. As I stated earlier, I was the Director of Nursing at a nursing home for one year. I quit my job because of the horrible care I witnessed and the impossible situation nursing home owners and administrators put their staff members in. To put it simply, the quality of care is horrible. For example, in the nursing home where I worked, we would

run out of towels for each resident and the owners and administrators refused to purchase more. As a result, there were days when residents went without a bath because there weren't enough towels to go around. The majority of the staff that worked in the home had minimal education and were barely paid minimum wage. There was very little by way of training, background checks, and employee supervision. To make matters worse, the Administrator of the home that I worked in frequently hired her relatives as employees. They made it impossible for me to do my job and serve my patients. The only way to complain or change things was to go through or around the Administrator, which proved to be an impossible task.

Knowing all of this about the quality of nursing home care in this country, it seems just unimaginable to me that the corporations that own these homes are allowed to abuse residents and not be held accountable in a court of law for their actions. This is unacceptable to the families that I talk to about this, and it should be unacceptable to the members of this Committee. Hopefully my speaking out will assist the effort to protect nursing home residents and their families in the future.

Thank you for listening to my story.